

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

Application of Pacific Gas and Electric Company (U 39 E) 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 No. 17-04-010
(Filed April 6, 2017)

**REPLY OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) TO
THE UTILITY REFORM NETWORK AND THE COMPETITIVE
TELECOMMUNICATIONS COMPANIES' RESPONSE TO MOTION
TO WITHDRAW APPLICATION 17-04-010**

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Dated: September 4, 2018

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I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Zita Kline's email dated August 27, 2018 granting permission and Rule 11.1(f) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") respectfully files this Reply to the *Response of The Utility Reform Network and the California Association of Competitive Telecommunications Companies To Motion of Pacific Gas and Electric Company to Withdraw Application 17-04-010* ("TURN and CALTEL Response") in the above referenced proceeding.

II. PG&E'S MOTION SHOULD BE GRANTED WITHOUT THE CONDITIONS REQUESTED BY TURN AND CALTEL

On August 22, 2018, The Utility Reform Network ("TURN"), and the California Association of Competitive Telecommunications Companies ("CALTEL") jointly filed the TURN and CALTEL Response. TURN and CALTEL do not oppose PG&E's motion to withdraw its application, however request the Commission to adopt "necessary conditions

applicable to any future CLEC [Competitive Local Exchange Carrier]-related applications as part of a decision permitting PG&E to withdraw its current application.”^{1/}

It is clear that the Commission has the authority to impose conditions on future applications.^{2/} The Commission has asserted its authority to impose conditions “to enforce the law by deciding issues of continuing importance or preserving the record for future proceedings.”^{3/} However, TURN and CALTEL do not present appropriate conditions that would promote these goals.

As discussed further below, the conditions requested in the TURN and CALTEL Response should be rejected as unnecessarily prejudicial. Conditions imposed by the Commission should not preemptively judge or unnecessarily determine the issues in a future proceeding. Not only are the requested conditions unreasonably prejudicial towards PG&E, TURN and CALTEL do not provide appropriate support to justify the Commission imposing such conditions. Instead, the TURN and CALTEL Response inaccurately characterizes PG&E’s efforts and participation in this proceeding as “background and context” to justify the request. Accordingly, PG&E respectfully requests the Commission reject the conditions proposed by TURN and CALTEL and grant PG&E’s motion to withdraw the Application without prejudice.

A. The Requested Conditions are Unnecessarily Prejudicial

The TURN and CALTEL Response recommended that the Commission adopt three conditions in granting PG&E’s motion to withdraw: (1) PG&E’s future application must address each of the issues identified in the Scoping Memo of July 13, 2017 and the ALJ’s Ruling of August 2, 2018; (2) the Commission should direct PG&E to abandon its “stage gates” approach and provide, among other things, a business plan; and (3) the Commission should require PG&E

^{1/} TURN and CALTEL Response, at pp. 1 and 7.

^{2/} D.01-02-040.

^{3/} *Id.*, at p. 5.

to describe how its current process for providing nondiscriminatory access will be modified, which should include specific safeguards such as communication firewalls.^{4/}

First, PG&E recognizes that the *Administrative Law Judge's Ruling Requiring Applicant to File a Response to Information Requested Within 30 Days* ("August 2, 2018 ALJ Ruling") found the current Application to be insufficient to meet the certification requirements and required necessary clarifications and additional information.^{5/} PG&E appreciates the opportunity provided by the ALJ to further clarify and provide more information had PG&E wished to continue to pursue the Application. However, the requested clarification and additional information is specific to the review of the current Application. Similarly, the *Scoping Memo and Ruling of Assigned Commission and Administrative Law Judge* issued on July 13, 2017 ("Scoping Memo") outlined the issues, which are based on the current Application and specific responses filed by parties to this proceeding.^{6/} Imposing this first condition requested by TURN and CALTEL would prejudicially judge the sufficiency of an application that has not yet been filed and determine the scope and issues of a future proceeding based on an outdated application and responses of parties that may or may not be a part of the future proceeding.

Further, the TURN and CALTEL Response requested that the August 2, 2018 ALJ Ruling and Scoping Memo must be addressed "satisfactorily and substantively" in a future application.^{7/} It is unclear how PG&E on its own would be able to address these issues in a satisfactory and substantive manner because the issues outlined in the Scoping Memo are questions not addressed specifically to just PG&E but require active participation and input from other intervening parties. For example, PG&E's answers to the questions related to the broader issue of "If a CPCN is granted, are any conditions necessary to ensure that the public interest is

^{4/} TURN and CALTEL Response, at pp. 6-7.

^{5/} August 2, 2018 ALJ Ruling, at pp. 1 and 5.

^{6/} Scoping Memo, at p. 2.

^{7/} TURN and CALTEL Response, at p. 6.

served?”^{8/} would be from PG&E’s perspective without collaborative discourse or recommendations from other interested stakeholders and, presumably, would not be considered satisfactory or substantive by an intervening party or the Commission. As such, adopting this request would result in an ineffective and futile exercise without efficiency gains for any future proceeding. The Commission should allow stakeholders the opportunity to review and identify specific issues that arise from a future application without encumbering the process with questions that may no longer be issues in a future proceeding.

With respect to the second and third requested conditions, accepting those conditions would conclusively decide the merits of un-litigated issues in this proceeding. The issues of whether the “stage gates” approach is appropriate and whether PG&E’s existing process of administering nondiscriminatory access require modifications have not been fully litigated since PG&E and parties did not participate in evidentiary hearings or briefing of the issues. In fact, there is no evidentiary record in this proceeding to support adopting these requested conditions. The request to impose the second and third conditions is an attempt by TURN and CALTEL to incontestably resolve and prevail on issues that would remain primarily controversial in this proceeding had PG&E continued to pursue the current Application. Furthermore, the broader issues of nondiscriminatory access can be more appropriately addressed in other proceedings.^{9/} Adopting these two requested conditions would require the Commission to inappropriately make determinations on the merits of this proceeding without an evidentiary record and, thus, should be rejected.

The Commission should reject all three requested conditions as unnecessarily prejudicial to any future PG&E CLEC-related application. PG&E has the burden of meeting and complying with the Commission’s requirements for filings of future applications; therefore, there is no need

^{8/} See Scoping Memo, at p. 6-7.

^{9/} See *Motion of PG&E to Withdraw Application 17-04-010*, at pp. 5-6.

for the Commission to adopt conditions that apply specifically to the current Application that PG&E has requested to be withdrawn.

B. The Background and Context for the Requested Conditions Do Not Provide a Justification for Granting the Requested Conditions

The TURN and CALTEL Response states that “the Commission should consider the context in which the request arises” when determining the appropriate conditions.^{10/} However, the listed “key elements of the proceeding”^{11/} were simply the procedural history of the proceeding with colorful summaries of the parties’ positions that have not yet been litigated or one-sided narratives of “negative experience”^{12/} specific to TURN and CALTEL.

In particular, TURN and CALTEL states:

In the view of CALTEL, ORA [Office of Ratepayer Advocates], and TURN, the efforts to reach a mutually agreeable settlement were severely hampered on several key issues by PG&E’s chosen approach in this proceeding: filing a CLEC application without a business plan, but rather based on a theoretical construct of how the utility might proceed if the Commission granted a CPCN. The negotiations ultimately were not fruitful, as indicated in the Joint Status Report submitted on August 3, 2018.

Although the parties did not ultimately reach a settlement agreement, this characterization is misleading and inaccurate of PG&E’s efforts and willingness to negotiate a settlement in good faith. Moreover, PG&E is disappointed in TURN and CALTEL’s disclosure of confidential settlement discussions without PG&E’s consent pursuant to Rule 12.6 of the Commission’s Rules of Practice and Procedure.

PG&E, ORA, TURN, and CALTEL participated in substantive settlement discussions from December 2017 through July 2018. During the May 22, 2018 Status Conference (“May Status Conference”), TURN stated that there was “a continuing exchange of pretty substantive information...in addition to the actual exploration of what settlement positions might be

^{10/} TURN and CALTEL Response, at p. 2.

^{11/} *Id.*, at p. 2-4.

^{12/} *Id.*, at p. 5.

acceptable to the group...it's still worth continuing to pursue that [settlement] effort..."^{13/}

Similarly, ORA stated: "We also got in some information and presentations from PG&E in our efforts to understand the boundaries of settlement. We are optimistic as to the results."^{14/}

Finally, CALTEL agreed with TURN, ORA, and PG&E's view and was "hopeful" that the parties will "be able to resolve all the issues by August 3rd."^{15/} And so, it is difficult to reconcile how the parties could have been optimistic and willing to continue with settlement discussions for many months and during the May Status Conference if it were the view of TURN, ORA, and CALTEL that efforts "were severely hampered" by "key issues" that were fundamental to PG&E's position, such as the initial "stage gates" approach outlined in the current Application.

Nonetheless, the background and context provided by TURN and CALTEL do not provide any justification for the requested conditions. The recommendation to impose these conditions were not to support the Commission in "deciding issues of continuing importance" or "preserving the record for future proceedings."^{16/} Rather, TURN and CALTEL's requested conditions were to remedy "the risk of repeating the negative experience," or "risk of a repeat of this unsatisfactory experience", or to "avoid some pitfalls that have emerged from the experience."^{17/} The Commission should not adopt unsupported conditions requested for the main purpose of mitigating negative or unsatisfactory experiences asserted by intervenors in a proceeding.

III. CONCLUSION

PG&E appreciates that TURN and CALTEL do not oppose PG&E's motion to withdraw Application 17-04-010 and the parties' participation and engagement in this proceeding.

However, for the foregoing reasons, PG&E respectfully requests that the Commission reject the

^{13/} May 22, 2018 Status Conference Transcript, at p. 6, lines 7 -11.

^{14/} *Id.*, at p. 7, lines 13 -17.

^{15/} *Id.*, at p. 8-9, lines 26 -2.

^{16/} See D.01-02-040, at p. 5.

^{17/} TURN and CALTEL Response, at p. 5-6.

