

**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 17-04-010
(Filed April 6, 2017)

**PROTEST OF THE CALIFORNIA ASSOCIATION OF COMPETITIVE
TELECOMMUNICATIONS COMPANIES ON THE APPLICATION OF PACIFIC
GAS AND ELECTRIC COMPANY FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

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Pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure, the California Association of Competitive Telecommunications Companies¹ (“CALTEL”) protests the Application of Pacific Gas and Electric (PG&E) for a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange and interexchange services in the territories of AT&T California, Frontier California, Consolidated Communications and Citizens Telecommunications (Application). CALTEL explains in detail below that granting a CPCN allowing PG&E to provide telecommunications services could cause substantial harm to CLECs unless strict limitations are placed on PG&E’s ability to favor its own operations for access to poles and conduits over which PG&E (and joint pole owner AT&T) have bottleneck control.

I. INTRODUCTION

CALTEL members are wireline competitive local exchange carriers (CLECs) that primarily provide competitive voice and broadband Internet retail services to California residential and business end user customers. Most of these CLECs are facilities-based providers that operate extensive networks of owned and leased facilities. These leased facilities include interoffice transport circuits and last-mile connections like PG&E proposes to offer.

Some CALTEL members also offer these services on a wholesale basis to other CLECs, ILECs, cable companies and wireless carriers.

¹ CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice and broadband Internet services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

Many CALTEL members also seek access to utility poles and conduits in order to deploy their facilities-based services. In order to gain access to this infrastructure, CLECs must enter into lease agreements for access to PG&E's poles and conduits. This access is provided pursuant to the Commission's ROW rules and the terms and the conditions of PG&E's current lease agreements.

Consequently, CALTEL member companies are uniquely affected by PG&E's application—they are at the same time “attachers” or customers for access to the Applicant's utility infrastructure, potential customers of the wholesale communications services that the Applicant proposes to provide and potential competitors of the retail and wholesale communications services that the Applicant proposes to provide. CALTEL therefore is a key stakeholder in ensuring that any potential harms that could result from this Application are fully identified, addressed and, to the degree possible, mitigated prior to its approval.

CALTEL's primary concern is that, based on the information provided in the application, issuance of a CPCN to PG&E may have a harmful effect on the difficult process of gaining access to PG&E infrastructure. CALTEL is concerned that there may be both a harmful effect on day-to-day operations as well as on the availability and terms and conditions under which CALTEL members are permitted to place and maintain attachments. Any additional disruption or constraint on access to PG&E poles and conduit will have an adverse effect on CALTEL members' ability to compete, creating a domino effect on the state of competition in the residential and business telecommunications and broadband Internet market in California.

CALTEL is reviewing the impact of the application on its members, and further information will be needed to complete this review.² CALTEL plans to actively participate in this proceeding. It is clear that in order to ensure that the Applicant's assurances and public interest claims are thoroughly analyzed, evaluated and addressed, the Commission will need additional data from PG&E.

In the discussion that follows, CALTEL will briefly describe its initial concerns.

II. DISCUSSION

Areas of Concern

CALTEL has identified the five following issues as having the likelihood to cause harm to its members unless the Commission includes specific limitations on PG&E's proposed telecommunications operation:

1. Non-Discriminatory Access to PG&E Poles

PG&E fails to provide any concrete, verifiable plan to ensure that CLEC attachers, with whom it will now compete, are able to attach to PG&E poles and conduit on a reasonable and non-discriminatory basis. Instead, PG&E offers only to continue using its existing, flawed procedures. PG&E stated in its Application:

Applicant will continue to adhere to Commission decisions, including D.98-10-058, as modified by D.16-001-046 (the "ROW Rules") to ensure that all similarly situated carriers are treated uniformly and provided access to Applicant's support structure on a nondiscriminatory, first-come, first-served basis. Moreover, Applicant's internal procedures will ensure that Applicant's telecommunications business does not receive preferential treatment.³

Based on the experience of CALTEL members both those who are members of the Northern California Joint Pole Association (NCJPA) as well as those who are not (or

² CALTEL notes that PG&E was unable to demonstrate in its Application that it meets all of the standard qualifications to obtain a CPCN.

³ Application at p. 12.

whose applications may be pending), protections from non-discriminatory treatment need to rely on more than PG&E's "internal procedures."

Even without being a direct competitor for access to PG&E poles, CLEC attachers' applications routinely meet with unreasonable costs and delays. Delays are associated with the lack of mechanized processes, unwillingness to share data except on a piecemeal, route-specific basis, and failure to develop workable processes with joint pole owners like AT&T.

One recent example of the latter was an announcement by AT&T in the spring of 2015 that it would no longer attempt to purchase additional grade (i.e. purchase an interest in the pole) from PG&E on behalf of new attachers where there was insufficient room in the communications space on the joint pole. AT&T and PG&E informed attachers that, pursuant to the rules and regulations of the NCJPA, attachers would need to join the pole association in order to purchase additional grade.

That policy was slightly revised by AT&T to differentiate between pre-1998 and post-1998 joint poles, but otherwise remains unchanged. While AT&T was the primary driver of this policy change, CALTEL members were told that it was motivated by a desire by both pole owners to create a significant access barrier for non-NCJPA members.

Some of this problem could be mitigated if attachers had increased access to pole data so they could determine for themselves whether there is sufficient room in the communications zone on a given pole, or they could find nearby poles with sufficient room. As CALTEL describes in its comments in R.17-03-009 (the wireless pole attachment proceeding), competitive carriers face significant information deficits and

imbalances that tip the scale overwhelmingly in favor of access by pole owners.

CALTEL made a number of proposals in those comments that should be implemented immediately and made conditions for granting PG&E's CPCN:

- **Require Pole and Conduit Owners to Make Existing Data Available to Applicants in a Useable Format**
The Commission should consider requiring pole and conduit owners to release all digital records to prospective attachers. Attachers should be permitted to request records in bulk (e.g. not limited to a route by route basis) and at no cost, subject to execution of reasonable non-disclosure agreements. Digital records should explicitly include all GIS (Geographic Information Systems) records as well as records in other software formats including, but not limited to, AutoCAD, ARAMIS, and JPMTS. Records should be converted to portable/open formats when technically possible.
- **Include Current Pole Loading and Other Essential Information in Digital Records for Poles**
The Commission should consider requiring pole owners to maintain essential pole information, including but not limited to pole loading calculations, pass/fail information, scheduled pole replacement dates, maximum grade data, and intrusive testing results on their digital records. This information should be included in the digital records that are made available to attachers upon request and subject to reasonable non-disclosure agreements.⁴

Pole replacement processes are another concern. Far too often PG&E requires CLECs to go through the slow and expensive process of replacing poles rather than exploring ways to make poles quickly useable in a safe manner. When CALTEL members are required to replace a pole, they experience the same delays with PG&E as CCTA described in R.17-03-009:

Even where it makes economic sense for a cable company to replace poles, the IOU places the pole in its queue for replacement, and it can be months if not years before a pole is replaced. Delay results in loss of broadband service to new customers and loss of revenue to cable companies whose existing or potential business customers often cannot afford to wait for up to six months or more while the cable provider works

⁴ CALTEL Opening Comments and Prehearing Conference Statement on Order Instituting Rulemaking Proceeding to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision D.16-01-046, R.17-003-009, dated May 3, 2017, at p. 22.

through the pole-replacement process. Not only is the customer lost, but so too is the expansion of California's broadband infrastructure.⁵

CALTEL members have also been stymied in their effort to persuade PG&E to employ engineering upgrades such as truss systems that allow poles to be used safely in lieu of the time and expense associated with pole replacements.⁶ Thus far, PG&E has flatly rejected such immediate safety fixes even though the CLEC requesting to perform the upgrade would do so at its own expense.

Both CALTEL and CCTA also noted the lack of concrete intervals in the pole attachment process. Although the Commission adopted intervals for ILEC-owned poles, there is no timeline for access to IOU poles. PG&E offers only to "ensure that all similarly situated carriers are treated uniformly and provided access to Applicant's support structure on a nondiscriminatory, first-come, first-served basis" and to use "internal procedures" to ensure that its new CLEC affiliate does not get preferential treatment. Given the lack of transparency and difficulties with PG&E's existing processes, which include other pole access issues like intrusive testing and pole loading processes, PG&E's vague statements are meaningless. The Commission should include specific, verifiable requirements in PG&E's CPCN to ensure that PG&E cannot favor its own telecommunications operations over competing CLECs.

Finally, CALTEL notes that PG&E's standard Overhead Facilities License Agreement, which was last updated in Advice Letter 2982-E in February, 2007,⁷ does not

⁵ CCTA Opening Comments and Prehearing Conference Statement on Order Instituting Rulemaking Proceeding to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision D.16-01-046, R.17-003-009, dated May 3, 2017, at p. 4.

⁶ See, e.g., <http://www.osmose.com/content/pages/et-truss> .

⁷ PG&E Advice Letter 2982-E, Informational Telecommunications Advice Letter, dated February 13, 2007 at https://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_2982-E.pdf .

contain any terms and conditions regarding PG&E's obligations to provide non-discriminatory access, including terms relating to its rights to reserve space for its own use and any use of wireless antennas to support telecommunications services.⁸ Significant amendments to this standard agreement are needed to document these obligations prior to approval of PG&E's CPCN. Similarly, the terms and conditions that relate to pole rearrangements and replacements should be amended to limit PG&E's ability to reclaim capacity and space, and to evict overhead facility tenants, to its core gas and electric business needs.

2. Non-Discriminatory Access to PG&E Conduit

PG&E makes the same vague commitment to provide non-discriminatory treatment to carriers seeking access to its underground facilities (duct and conduit) as noted above for pole access. CALTEL members have less experience with gaining access to PG&E conduit because prior to the spring of 2016, CLECs were told that there was no available space and that PG&E was not willing to include such access in the standard licensing agreement. Consistent with that statement, references to conduit access and conduit rates in earlier overhead and underground license agreements⁹ were removed and shown as "Intentionally Omitted" in the standard agreements filed pursuant to Advice Letter 2982-E in February, 2007.¹⁰

⁸ PG&E has SCADA antennas and radios installed on utility poles in the electric utility zone despite a prohibition on CLEC telecommunications antennas in that zone. PG&E should be similarly restricted from placing new equipment or using existing equipment in the electric zone on utility poles for its new telecommunications operations.

⁹ See, e.g., PG&E Advice Letter 2476E, Master Pole and Underground Facilities License and Lease Agreement, Informational Advice Letter Filing Pursuant to D.98-10-058, dated April 2, 2004 at https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_2476-E.pdf.

¹⁰ PG&E Advice Letter 2982-E, Informational Telecommunications Advice Letter, dated February 13, 2007 at https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_2982-E.pdf.

Webpass Telecommunications documented PG&E's policy of denying access to its conduits in an application for an arbitration of PG&E's denial of access to its underground facilities:

Initially, PG&E claimed that it did not have available space or capacity in any support structures (except for poles) and that it had significant safety and operational concerns relating to the colocation of fiber optic facilities in its underground facilities and, on that basis, refused to negotiate with Webpass for purposes of ROW access under D.98-10-058. At the same time, however, PG&E expressed a willingness to provide Webpass with access to its conduit and other support structures on a commercial basis (outside the requirements of D.98-10-058) in exchange for compensation substantially exceed the "preferred outcomes" defined by that decision. But this was not consistent with Webpass' business needs and plans.¹¹

Webpass withdrew the application on May 13, 2016, indicating a settlement had been reached. PG&E submitted Advice Letter 4850-E on May 31, 2016, to which a "Duct, Conduit, and Other Structure Space License Agreement" between PG&E and Webpass was attached.¹² This "template" was patterned on the proposed agreement that Webpass had drafted and attached to its application for arbitration.

Last December, PG&E negotiated new conduit agreements with three CLECs using the Webpass agreement as a starting point. In AL 4978-E, PG&E attached a new standard conduit license agreement that was based on a redlined version of the Webpass agreement.¹³ Unlike the standard Overhead Facilities agreement, however, this new standard agreement contains substantive terms and conditions with regards to non-

¹¹ Application by Webpass Telecommunications, LLC for Arbitration of Dispute, A.16-03-010, dated March 16, 2016, at p. 2.

¹² PG&E Advice Letter 4850-E, Telecommunications Advice Letter for Duct, Conduit, and Other Structure Space License Agreement, dated May 31, 2016, https://www.pge.com/tariffs/tm2/pdf/ELEC_4850-E.pdf at https://www.pge.com/tariffs/tm2/pdf/ELEC_4850-E.pdf.
PG&E Advice Letter 4978-E, Telecommunications AL for 3 License Agreements for Duct, Conduit & Other Underground Structure Access, dated December 15, 2016, at https://www.pge.com/tariffs/tm2/pdf/ELEC_4978-E.pdf.

discrimination obligations and rules regarding PG&E's ability to reserve and reclaim space for its own uses. Approval of PG&E's CPCN application, this standard agreement should be amended to ensure that reservation and reclamation terms are limited to PG&E's core electric and gas businesses.

CALTEL also included recommendations in its comments in R.17-03-009 regarding improved access to conduit data:

- **Include Space Availability and Other Essential Information in Digital Records for Conduits**

The Commission should consider requiring conduit owners to maintain essential conduit information, including but not limited to the availability of space on a given conduit span, on their digital records. This information should be included in the digital records that are made available to attachers upon request and subject to reasonable non-disclosure agreements.¹⁴

Terms and conditions in the standard conduit agreement regarding access to any information, including “maps, and currently available records such as drawings, plans, and other information that it uses in its daily transaction of business necessary for evaluating the availability of Excess Capacity in support structures for a specified area” should be generally available to CLECs. The terms governing such information should revert back to the language in the Webpass agreement, and should not be limited to a “proposed route or location of Attachments specified by the Permittee in the request,” as modified by PG&E.¹⁵

3. Clarification of the Types of Services that PG&E Proposes to Provide

¹⁴ CALTEL Opening Comments and Prehearing Conference Statement on Order Instituting Rulemaking Proceeding to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision D.16-01-046, R.17-003-009, dated May 3, 2017, at p. 22.

¹⁵ PG&E Advice Letter 4978-E, Telecommunications AL for 3 License Agreements for Duct, Conduit & Other Underground Structure Access, dated December 15, 2016, at https://www.pge.com/tariffs/tm2/pdf/ELEC_4978-E.pdf.

PG&E describes the local exchange services that it proposes to offer after obtaining CPCN authorization from the Commission in several places in the Application:

Applicant intends to provide services to telecommunications carriers and business, government, and educational enterprises, and such services may include managed wavelength point-to-point connections, Ethernet services, private fiber networks, and wireless backhaul. . . Applicant does not intend to provide residential local exchange service.¹⁶

Applicant will offer its services on a non-discriminatory and detariffed basis pursuant to bi-lateral contracts only, as permitted in D.07-09-018 and General Order 96-B, Rule 5.1. Applicant will serve only business customers and therefore will not provide basic service (local exchange service to residential customers), as that term has been defined by the Commission.¹⁷

Applicant currently offers various services to telecommunications carriers, including use of excess capacity on Applicant's existing fiber optic network (e.g. "dark fiber") and access to available capacity on Applicant's existing poles and underground structures to install fiber optic cables. Some of these telecommunications carriers have inquired whether Applicant offers or will offer certain of the proposed CLEC Business services (i.e. lit fiber service), and Applicant wishes to meet this customer demand by offering those services as soon as possible.¹⁸

Applicant estimates that it will have approximately 1-5 customers after one year and will have more than 5 customers by the fifth year after commencing provision of the services.¹⁹

PG&E also states that it will utilize excess capacity on its telecommunications network unless there are space limitations, in which case it will install "fiber and related facilities and equipment in or on existing poles, towers, buildings, fiber conduits, ducts rights-of-way, trenches, and other facilities and structures *of other entities*."²⁰

Using SCE's CLEC entity (Edison Carrier) as a comparison, this description raises interesting questions. It is CALTEL's understanding that Edison's business model

¹⁶ Application at p. 4.

¹⁷ Application at p. 13.

¹⁸ Application at p. 21.

¹⁹ Application at p. 13.

²⁰ Application at p. 5. (emphasis added).

is based on leasing excess capacity on its own telecommunications network to wholesale customers, and that Edison does not lease space or facilities from other facility owners on behalf of its wholesale customers. Although there is nothing unusual in the initial list of services, and in fact they are all services that CALTEL member companies offer to wholesale and enterprise customers, the low number of anticipated customers, and the reference (repeated two times) that PG&E will be placing attachments on structure owned by other entities, are surprising.

The disclosure that PG&E's telecommunications facilities may utilize third party poles and conduit increases concerns about the possible discriminatory impact of granting a CPCN to PG&E. There is reason to believe that AT&T is currently or is about to begin a trial of its new broadband-over-power-line (BPL) technology, called AirGig,²¹ in the Ukiah, California. Based on CALTEL's understanding, that technology relies on placing special antennas on utility poles, and relying on the magnetic field around the power lines to carry and strengthen the signal. This descriptions appears to qualify as a landlord/tenant arrangement as contemplated in the Commission's BPL decision.²²

The timing of this BPL trial (if in fact underway) in connection with PG&E's CPCN Application, although probably coincidental, raises some questions regarding what role PG&E will play in the deployment of the product and the terms and conditions under which each company will be allowed to use space on utility poles. It is reasonable to ask whether AT&T is the telecommunications carrier that PG&E indicates has been asking

²¹ See AT&T in Advanced Discussions with Power Companies and Others to Trial Project AirGig, January 31, 2017 at http://about.att.com/story/trial_project_airgig.html. See also Workshop Report in Water-Energy-Telecommunications Nexus Proceeding, R. 13-12-011, dated October 20, 2016 at p. 21.

²² Opinion Implementing Policy on Broadband Over Power Lines, D.05-09-006, R.05-09-006, at pp. 14-16.

PG&E to begin offering “lit fiber,” and if so, is this inquiry in connection with the trial of AirGig? If PG&E’s CLEC business will be a partner in this deployment, is it offering purely wholesale services to AT&T? ²³ Is it anticipating needing access to AT&T-owned poles and conduit? PG&E’s relatively low estimate of customers in the first year (1-5) suggests that its Application has been submitted in order to support a major partnership and not to market and offer services to the wholesale market at-large. An examination of all of these issues is required to ensure that PG&E and AT&T will not give preferential treatment to each other’s cross over operations with regard to use of poles and conduit.

4. Claims Regarding the Application’s Impact on Competition and Competitive Choice

Given PG&E’s modest estimate of 1-5 future customers, PG&E’s claims on pages 11 and 12 of the Application that granting its CPCN will have a positive impact on competition and competitive choice seem significantly overstated. To be clear, CALTEL consistently champions increased competition, and its members compete for customers in the market every day. Further, its estimate of serving only 1-5 customers in the first year and its anticipated use primarily of existing fiber and infrastructure²⁴ seems unlikely to substantially generate “competitive pricing,” “expanded product and service offerings,” or “an increase in the diversity of telecommunications infrastructure routes and the supply of existing and future telecommunications services and products.”²⁵ The Commission should require that PG&E provide some specific details to back up these claims.

5. Revenue-Sharing Arrangement

²³ The BPL decision did not specify whether an electric utility needed to obtain a CPCN in order to participate in a BPL deployment, either with a third-party “tenant” or as a BPL affiliate.

²⁴ Application, at p.12.

²⁵ Application at pp. 11-12.

CALTEL is not an expert on gas and electric utility ratemaking, and therefore will look to other parties to evaluate PG&E's revenue-sharing proposal. As noted in the Application, however, PG&E's proposal differs in some important respects from the mechanism that the Commission adopted for Southern California Edison's CLEC operations in D.98-12-083/A.97-06-021.

Nonetheless, any evaluation of this revenue-sharing proposal must not only ensure that PG&E ratepayers are protected from improperly subsidizing the CLEC operations, it must also ensure that improper cross-subsidies do not have an anti-competitive impact on the market for voice and broadband Internet services. These services are offered today by other industry participants that are not rate-regulated, and the Commission must ensure that its actions have not created a circumstance where it is in the role of picking winners and losers.

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III. CATEGORIZATION AND SCHEDULE

CALTEL does not object to the proceeding being categorized as "ratesetting" as proposed by the Applicant and preliminarily determined by the Commission's Executive Director.²⁶

CALTEL agrees with the preliminary determination in Resolution ALJ 176-3396 that evidentiary hearings will likely be needed in this proceeding. As a result, the schedule proposed in the Application will need to be adjusted accordingly.

²⁶ Resolution ALJ 176-3396 dated April 27, 2017.

IV. CONCLUSION

CALTEL welcomes this opportunity to provide comments on the Application and to summarize at a high level its top five areas of concern. CALTEL looks forward to providing additional comments and recommendations in this proceeding.

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Signed and dated May 15, 2017 at Walnut Creek, CA

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