

**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)

**TESTIMONY OF SARAH DEYOUNG
ON BEHALF OF THE CALIFORNIA ASSOCIATION OF
TELECOMMUNICATIONS COMPANIES (CALTEL)**

November 22, 2017

Q.1: Please state your name, title, and business address.

A.1: My name is Sarah DeYoung. I am the President and Executive Director of the California Association of Competitive Telecommunications Companies (“CALTEL”). My business address is 50 California Street, Suite 1500, San Francisco, California, 94111.

Q.2: Please describe your educational background and work experience.

A.2: I earned a Bachelor of Arts degree from the University of Michigan and a Masters of Management (MBA) from the Kellogg School of Management at Northwestern University.

In 1982, I joined the Bell System’s Long Lines Division in Chicago, Illinois. At Divestiture in 1984, I remained an employee of AT&T, and for the next six years held a variety of positions in the Finance, Engineering and Access Management Divisions.

In 1995, I led development of an early template for an interconnection agreement between AT&T and Ameritech in the context of Ameritech’s “Customers First” local competition trial. Following passage of the 1996 Telecommunications Act (“Act”), I joined AT&T’s Local Services Organization in San Francisco. During the next eight years, I was a part of, and ultimately led, the team that served as AT&T’s interface with Pacific Bell (and later with all incumbent local exchange carriers acquired by SBC Communications) to ensure that the market-opening requirements of Sections 251, 252 and 271 of the Act were reasonably attained.

At the time I left AT&T to join CALTEL in 2004, I was the Director responsible for managing the business-to-business relationship between AT&T and SBC Communications. My team supported AT&T’s consumer and business services product

management organizations by negotiating and arbitrating interconnection agreements and leveraging regulatory and legal avenues to resolve a wide variety of technical, operational and contractual issues.

Since September 2004, I have served as CALTEL's President and Executive Director and have prepared and filed comments (as well as verified declarations) in a number of Commission proceedings, focusing in particular on the availability of wholesale inputs in facilitating competitive choice in retail telecommunications markets. I also meet regularly with members of the California State Assembly and State Senate, particularly the chairmen and staff of the Assembly Utilities and Commerce and the Senate Energy, Utilities and Communications Committees, to discuss issues of concern to CALTEL's member companies.

Q.3: Have you testified before the California Public Utilities Commission in the past?

A.3: Yes, I have testified on numerous occasions. I have also actively participated in numerous Commission workshops and panel discussions. In addition, I have testified before other state commissions, the California state legislature, the Federal Communications Commission ("FCC") and the U.S. Department of Justice ("DOJ").

Q.4: For whom are you offering this testimony?

A.4: I am testifying on behalf of CALTEL. CALTEL is a non-profit trade association that represents the interests of wireline competitive local exchange carriers ("CLECs") in regulatory proceedings at the Commission and FCC, and on legislative issues before the California state legislature.

Q.5: What is the purpose of your testimony?

A.5: After reviewing the testimony provided by PG&E, I believe that many questions remain regarding the issues that CALTEL raised in its protest of PG&E's application for a Certificate of Public Convenience and Necessity ("CPCN") to operate as a CLEC and non-dominant interexchange carrier. More importantly, I believe that PG&E did not provide adequate responses to many of the questions that the Assigned Commissioner and Administrative Law Judge ("ALJ") asked in the Scoping Memo and Ruling dated July 13, 2017.

First, PG&E witnesses did not provide *any* additional information explaining how PG&E meets the basic statutory requirements imposed on all CLECs, including CALTEL's members, to obtain a CPCN. And regarding the requirement that a prospective CLEC provide details about its proposed business plan, PG&E has pulled back from even the bare-bones information in its application. In fact, PG&E now directly contradicts the information provided previously by claiming that it has "not engaged in direct discussions or negotiations related to providing CLEC services with any communication companies" and "until individual opportunities can be fully evaluated, there is a risk that the market may not be interested in PG&E's CLEC offerings."¹ Moreover, the decision not to provide any detailed business plan information unfortunately (or conveniently) results in PG&E's inability to answer with any specificity many of the other questions in the Scoping Memo and Ruling. I believe that the

¹ Prepared Testimony of Pacific Gas and Electric Company, Application for a Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Carrier ("PG&E Testimony") at Chapter 2 (Business Plan), p. 2-4.

Commission would deny such a deficient application were it to be filed by another CLEC.

PG&E's testimony also did not adequately explain how it plans to modify its current processes and procedures with regard to providing access to poles, conduits and rights-of-way if its application is granted. Issues about non-discriminatory access to PG&E infrastructure formed the crux of CALTEL's concerns about the application, and without the additional information discussed at the Prehearing Conference, and documented in many of the questions in the Scoping Memo and Ruling, I cannot identify what additional modifications are needed to mitigate these critical competitive issues.

In this testimony, I will discuss these concerns in more detail and highlight the gaps between PG&E's testimony and the information requested by the Assigned Commissioner and ALJ. Unless and until PG&E provides that information, I recommend that the Commission deny PG&E's application.

Issue 1: Statutory and Other Requirements to Qualify for a CPCN

Q.6: Can you briefly describe what information PG&E failed to provide with regard to meeting the statutory and other Commission requirements to be granted a CPCN as required by the CPCN application and the questions in the Scoping Memo and Ruling?

A.6: Yes. The Commission has documented the requirements that CLECs must meet to qualify to receive a CPCN pursuant to Public Utilities Code Section 1001.² One of these requirements is a sworn affidavit that contains a number of assertions. One of these assertions is that neither the prospective CLEC nor any of its "affiliates, officers,

² See Requirements for CPCN Application Pursuant to P.U. Code § 1001 and CPUC Rules of Practice and Procedure ("CPCN Application"), dated July 1, 2013, available for download at <http://www.cpuc.ca.gov/General.aspx?id=1019>.

directors, partners, agents, or owners” have filed for bankruptcy or been associated with a company that has filed for bankruptcy. The prospective CLEC is also asked to assert that it has not been the subject of regulatory or civil enforcement actions, such as a sanction by the Commission.³

In response to this requirement, PG&E stated in the application that:

With respect to the representations that applicants seeking a CPCN for purposes of providing intrastate telecommunication services must address, Applicant submits that it cannot reasonably make the required representations as the company has operated in California since 1905 and employed thousands of persons since that time. Applicant states that it has been sanctioned by this Commission and that it cannot represent that none of its affiliates, officers, directors, partners, or any person acting in such capacity, whether or not formally appointed, have been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Similarly Applicant cannot represent that none of its affiliates, officers, directors, or any person owning more than 10% of Applicant, or anyone acting in such a capacity, whether or not formally appointed, has not held these positions with a telecommunications carrier that filed for bankruptcy or has not been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of section 17000 et seq. of the California Business and Professions Code or for any actions that involved misrepresentations to consumers or that none are currently under investigation for similar violations.⁴

That being the case, any other CLEC applying for a CPCN would be required to provide additional information:

If your answer to th(ese) question(s)⁵ is anything other than an unqualified “True”, please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations,

³ *Id.* at p. 5 (Requirement 15: Technical and Managerial Competence).

⁴ Application of Pacific Gas and Electric Company for a Certificate of Public Convenience and Necessity (“PG&E CPCN Application”), dated April 6, 2017, at pp. 14-15.

⁵ The assertions subject to the sworn affidavit are shown in the form of questions on the “Checklist for CPCN Application” which is attached to the above-referenced CPCN Application.

limitations, settlements, voluntary payments or any other type of monetary forfeitures.⁶

While I understand that PG&E and its prior bankruptcies and regulatory sanctions are well known to this Commission, it cannot be acceptable for PG&E to not even try to provide additional information and to attempt to explain why this information should not disqualify it from obtaining a CPCN. This is especially true because even in the relatively short time since the application was filed, PG&E was issued citations by the Commission's Safety and Enforcement Bureau on three separate occasions.⁷

Moreover, it is clear that the Assigned Commissioner and ALJ had the same expectation. The very first question in the Scoping Memo and Ruling (Section 2.1: Should a CPCN be Granted?) asks:

Does PG&E meet the basic statutory and other requirements to be granted a CPCN?⁸

But the only response provided in PG&E's witness testimony was to point back to the application:

In the application, which I verified PG&E sets forth its qualifications to operate as a CLEC and explains why the Commission should grant PG&E a CPCN.⁹

This response is clearly deficient, and I believe that the Commission would not accept it from any other CLEC applicant.

⁶ Checklist for CPCN Application at pp. 3-4 (Checklist items 8 and 9).

⁷ See "Electric Safety Citations Issued" at <http://www.cpuc.ca.gov/General.aspx?id=1965> .

⁸ Scoping Memo and Ruling at p. 3.

⁹ PG&E Testimony at Chapter 1 (Introduction), p. 1-2.

Issue 2: Prospective CLEC Business Case

Q.7: Can you briefly describe what information PG&E failed to provide with regards to describing its CLEC business case as required by the CPCN application and the questions in the Scoping Memo and Ruling?

A.7: Yes. A CLEC applying for a CPCN is required to provide information that “clearly identif(ies) the type of service it proposes to provide”¹⁰ and that includes “the estimated number of customers and their requirements for the first and fifth years in the future.”¹¹ Despite the concerns raised in the protests of CALTEL and other parties, a significant amount of discussion at the Prehearing Conference, and a number of questions in the Scoping Memo and Ruling focused on this issue, PG&E has managed to provide even less information in its testimony than was available in the original application. This new information also directly contradicts the information originally provided.

For example, PG&E originally stated:

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.¹²

Now, in Chapter 2 of PG&E’s testimony, PG&E witnesses state that “PG&E has not engaged in direct discussions or negotiations related to providing CLEC services with

¹⁰ CPCN Application at p. 1 (Requirement 3).

¹¹ *Id.* at pp. 4-5 (Requirement 14).

¹² PG&E CPCN Application at p. 21.

any communication companies.”¹³ Both of these statements cannot be true, and there is no attempt to explain or reconcile the discrepancies.

Furthermore, in the application PG&E stated that:

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.¹⁴

PG&E has backed off from this statement as well in its witness testimony, claiming instead that “until individual opportunities can be fully evaluated, there is a risk that the market may not be interested in PG&E’s CLEC offerings.”¹⁵ While this is certainly a risk faced by any new market entrant, I do not believe that the Commission would approve such a vague and unconvincing business plan from any other CLEC applicant.

What little information that PG&E provides about the services it proposes to offer is not only vague, but also technically confusing. PG&E proposes to offer “‘lit fiber’ and other services (as market demand and availability of PG&E facilities allow) to third party communication services providers, communication companies, and large institutional (wholesale) [sic] customers that need point-to-point services along routes where PG&E can make lit fiber available.”¹⁶ “Lit fiber” is an unclear and deficient description of specific services that PG&E proposes to offer, and “large institutional customers” are

¹³ PG&E Testimony at Chapter 2 (Business Case), p. 2-4. *See also* at p. 2-6: “PG&E has not yet entered into any negotiation or discussions with third parties regarding provision of lit fiber or other communication services.”

¹⁴ PG&E CPCN Application at p. 13.

¹⁵ PG&E Testimony at Chapter 2 (Business Case), p. 2-4.

¹⁶ *Id.* at Chapter 2 (Business Case), p. 2-5.

retail, and not wholesale, customers.¹⁷ PG&E's witnesses use other confusing terminology, and make confusing references to Commission decisions, that indicate they do not have a clear understanding of the current regulations that apply to communications services providers.¹⁸

This pared-back business case information unfortunately (or conveniently) has a domino effect on PG&E's ability to answer many of the Assigned Commissioner and ALJ questions in the Scoping Memo and Ruling. PG&E admits, for example, that because it "has not engaged in specific discussions of needs or negotiations to provide new services with any third-party communication services provider, so no specific service or pricing options are available."¹⁹ This also means that PG&E did not even attempt to answer the following questions in the Scoping Memo and Ruling:

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?²⁰

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.²¹

¹⁷ PG&E's witness does not appear to have a clear understanding of the difference between retail and wholesale customers: "PG&E proposes to offer new lit fiber communication services at the wholesale level to communication services providers and other large business customers, not at a retail level to residential consumers." PG&E Testimony at Chapter 2, p. 2-6. *See also* "PG&E plans to initiate contact with individual communication services providers or other large business customers to determine if there is sufficient intersection between their needs and available PG&E resources to justify entering into bilateral contracts with them." *Id.* I note, of course, that "communication services providers" would be wholesale customers of PG&E's CLEC entity, and would not be considered business customers. Business customers as well as residential customers are both considered to be retail customers.

¹⁸ For example, PG&E witnesses assert that "PG&E fully understands and will comply with the requirement to comply with the consumer protection rules identified in D.98-08-031." Chapter 2, p. 2-7. However, consumer protection rules for communications providers have been modified many times since 1998, and current requirements are documented in G.O. 168.

¹⁹ PG&E Testimony at Chapter 2 (Business Case), p. 2-7.

²⁰ Scoping Memo and Ruling at p. 4 (Section 2.1, Question 3).

To what extent does PG&E plan to build new capacity to support its telecommunications business as opposed to using existing capacity?²²

What impact 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?²³

PG&E has therefore clearly not met the Commission's requirements to provide detailed business case information. I do not believe that the Commission would accept this type of response from any other CLEC applicant.

Issue 3: Non-Discriminatory Access to PG&E Infrastructure

Q.8: Can you briefly describe what information PG&E failed to provide regarding how it would ensure non-discriminatory access to its infrastructure if its CPCN application were approved?

A.8: Yes. As I noted previously, this issue was the primary focus of CALTEL's protest, and I looked forward to reviewing PG&E's testimony to better understand how PG&E planned to address and mitigate these critical competitive concerns.

However, although PG&E devoted an entire chapter of its testimony to this issue, it provided no information about how its current processes and procedures would be modified to ensure that other communications providers were not competitively disadvantaged *vis-a-vis* its CLEC business unit. Instead, seven of the eight pages of testimony in Chapter 4 are devoted to describing PG&E's current processes and procedures at a summary level. The fact that PG&E devoted significant time and resources describing processes that provide access to Commercial Mobile Radio Service

²¹ *Id.* (Section 2.1, Question 4).

²² *Id.* at p. 5 (Section 2.2, Question 5).

²³ *Id.* at p. 6 (Section 2.3, Question 3).

(i.e., wireless) carriers²⁴ is also mystifying to me, since PG&E's CLEC will not be using those processes. This, in combination with the absence of pertinent information about post-approval modifications (described below), indicates that PG&E's witnesses did not understand the purpose of providing information about current processes.

Testimony concerning the key requirement to describe how these processes and procedures would be modified to ensure that PG&E's CLEC entity, if approved, would not receive discriminatory treatment, is totally absent from Chapter 4 of the testimony. Under a section entitled "Changes to Procedures Upon CPUC Grant of PG&E CPCN Application," PG&E describes two process "enhancements" that are interesting but have nothing to do with ensuring non-discriminatory access.²⁵

In fact, the only information provided in the testimony that addresses this issue is a single paragraph in Chapter 2 of the testimony:

After PG&E receives authorization to operate as a CLEC, PG&E's Joint Utilities team will continue to act as the clearinghouse for all complete requests for access from all CLECs, including PG&E's CLEC unit, and will apply consistent treatment to all CLECs in awarding access to requested facilities. Consistent with all other CLECs, PG&E's CLEC unit will submit attachment requests and route applications to PG&E's Joint Utilities team to ensure there is available capacity and to reserve that capacity for a specific project. PG&E's CLEC unit would also request access to assets such as those jointly owned under the Northern California Joint Pole Association Agreement consistent with the process required of other CLECs. PG&E's CLEC unit will seek access to utility facilities only when that access would serve a specific purpose, such as the needs of a customer or the development of a specific product route with defined characteristics.²⁶

²⁴ PG&E Testimony at Chapter 4 (ROW Procedures), pp. 4-4 and 4-5.

²⁵ *Id.* at pp. 4-7 and 4-8.

²⁶ *Id.* at Chapter 2 (Business Case), p. 2-9.

This paragraph is at least responsive, but it is hardly sufficient.²⁷ And there can be no doubt that the Assigned Commissioner and ALJ clearly shared my expectation that PG&E would not only describe its current processes and procedures but also describe what modifications would be made to address competitive concerns:

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.²⁸

In addition, PG&E did not even attempt to address the following questions in the Scoping Memo and Ruling:

If the CPCN is granted, to what extent will the PG&E telecommunications unit interact and share information with its energy operations?²⁹

How does PG&E intend to manage compliance with ROW Rule 6.A? Please include discussion of...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.³⁰

How does PG&E plan to ensure non-discriminatory access to its facilities, including but not necessarily limited to solely or jointly owned poles?³¹

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?³²

²⁷ For example, in Chapter 4, PG&E notes that "for poles jointly owned under the Northern California Joint Pole Association (NCJPA) Agreement, prospective tenants pursuing ROW access apply to the owner of the communication zone." Page 4-4. However, there is no confirmation, let alone detailed description, of the process that PG&E's CLEC will use to seek access to poles that are jointly owned with AT&T or another communications provider.

²⁸ *Id.* at p. 7.

²⁹ *Id.* at p. 5 (Section 2.2, Question 3).

³⁰ *Id.* at p. 6 (Section 2.3, Question 2).

³¹ *Id.* at p. 7 (Section 2.3, Question 4).

³² *Id.* (Section 2.3, Question 6).

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, or access to information about those facilities (including facility locations and available capacity), to engage in anti-competitive practices?³³

Without this information, I cannot even begin to meet the expectation in the Scoping Memo and Ruling to “recommend additional conditions to support competition in the communications market and non-discriminatory access.”³⁴ PG&E’s long-awaited testimony is not only extremely disappointing, but also has resulted in a questionable use of the Commission’s and parties’ use of limited time and resources.

Conclusion

Q.9: Do you have anything you’d like to add in conclusion?

A.9: Yes. I am hopeful that the information I have provided is helpful to the Commission in highlighting the gaps between PG&E’s testimony and the information requested by the Assigned Commissioner and ALJ. Unless and until PG&E corrects these deficiencies, I recommend that the Commission deny PG&E’s application. If the Commission instead allows PG&E’s application to remain on file, it should require PG&E to supplement its application with information that is fully and completely responsive to the requirements of the Scoping Memo and Ruling, and to the issues and questions raised in CALTEL’s protest and this testimony. Once that additional information has been submitted, CALTEL and other parties should be given the opportunity to supplement their testimony as well.

Q.10: Does this conclude your testimony?

A.10. Yes.

³³ *Id.* (Section 2.3, Question 8).

³⁴ *Id.* at p. 7.