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 resold and non-dominant interexchange services on a statewide basis.	Application 17-04-010 (April 6, 2017)

RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO

I. INTRODUCTION

In accordance with Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the City and County of San Francisco ("San Francisco") submits this response to the application filed by Pacific Gas and Electric Company ("PG&E") for a certificate of public convenience and necessity ("CPCN") to provide competitive local exchange and interexchange telecommunications services ("Application"). Pursuant to Rule 2.6, San Francisco submits this response in order to present the Commission with information that San Francisco "believes would be useful to the Commission in acting on the application."

PG&E states in the Application that it has been developing a telecommunications network in its gas and electric service territories for "decades."[1] In the past, PG&E has used that network primarily to support the provision of its "core gas and electric services"[2] Now PG&E wants to leverage this asset, which presumably was built with funds provided by PG&E's gas and electric ratepayers, to provide certificated telecommunications services.

[1] Application at 3.

[2] Application at 3.

San Francisco is still reviewing the Application and considering its potential impact on the City and PG&E ratepayers here. San Francisco believes that the Commission should consider at least three things before approving the Application. First, at least in San Francisco, PG&E has agreed that it would not use the telecommunications facilities it has installed and used for decades to provide telecommunications services directly to the public. The Commission should consider whether other PG&E franchises have similar provisions, and whether PG&E's use of those facilities to provide telecommunications services would be a breach of such franchises. Second, the Commission should consider whether PG&E's use of those facilities to provide telecommunications services would compromise its continued provision of regulated gas and electric services. Third, the Commission should consider whether PG&E's gas and electric ratepayers would be: (i) fully compensated for PG&E's use of the facilities they paid for to provide certificated telecommunications services; and (ii) protected from the risks associated with this new business line.

San Francisco has an interest in this proceeding as the entity that in 1939 granted PG&E franchises to provide gas and electric services here. San Francisco also has an interest in this proceeding both as a ratepayer and as a governmental body representing thousands of ratepayers.

II. INFORMATION THE COMMISSION SHOULD CONSIDER BEFORE GRANTING THE APPLICATION

A. The Commission Should Consider Whether PG&E's Use of Its Existing Communications Facilities in San Francisco or Other Jurisdictions to Provide Certificated Telecommunications Services Would be a Breach of Those Franchises

In 1939, San Francisco granted PG&E franchises to provide gas and electric services. In those franchises, San Francisco granted PG&E the authority to install in the public right-of-ways the facilities needed to provide gas and electric service.

Since some time prior to 1997, PG&E began installing "communications circuits, including fiber-optic facilities" in San Francisco that it "used to facilitate telecommunications in connection with

franchise activities."[3] While San Francisco initially disputed PG&E's authority to install and maintain communications facilities in its streets, the Board of Supervisors ultimately authorized PG&E to so install and maintain those facilities in connection with its provision of gas and electric services. [4]

In so doing, however, San Francisco did not authorize PG&E to use those facilities to provide telecommunications services directly to the public. Rather, San Francisco allowed PG&E to "lease or license unused capacity" in its communications facilities to "third parties, including any affiliate of PG&E engaged in the provision of telecommunications services (so long as such third parties, including any affiliate of PG&E engaged in the provision of telecommunications services, have obtained a valid franchise, encroachment permit or other legal authority to occupy the public streets and rights-of-way of the City for such purpose as the communications facilities . . . are to be used), provided that any lease is approved by the California Public Utilities Commission pursuant to a necessary proceeding under section 851 of the California Public Utilities Code."[5] Despite its limited authority in San Francisco, in its Application PG&E requests authority to use its existing communications facilities throughout it gas and electric service territories to provide certificated telecommunications services directly to the public.

The Commission should consider whether PG&E's use of its existing communications facilities in San Francisco to provide certificated telecommunication services might be a breach of its San Francisco franchises. The Commission should also determine whether any other local governments have placed similar restrictions on PG&E's use of the communications facilities it has installed in their streets pursuant to PG&E's electric and/or gas franchises, so that PG&E's activities could be a breach of those franchises too.

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[3] Resolution No. 693-97 at p. 2.

[4] Resolution No. 693-97 at p. 3.

[5] Resolution No. 693-97 at p. 3.

B. The Commission Should Consider Whether PG&E Must Show that It Can Use Its Existing Communications Facilities to Provide Certificated Telecommunications Services without Compromising Its Provision of Regulated Gas and Electric Services

San Francisco has no reason to doubt that PG&E uses its communications facilities in San Francisco and other parts of its service territory to ensure the safety and reliability of its gas and electric transmission and distribution facilities. For that reason, when PG&E proposed to lease so-called excess capacity on those facilities to third parties it had to file applications with the Commission. Among other things, in those applications PG&E had to describe how the proposed lease would serve the public interest. The Commission would not approve such an application unless the Commission found that the "public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."[6]

Should the Commission approve PG&E's Application for a CPCN, PG&E would presumably be relieved of the duty to file applications under Public Utilities Code section 851 every time it entered into an agreement to provide telecommunications services to a new customer. PG&E's CPCN would seem to authorize PG&E to use its existing communications facilities to provide telecommunications services directly to the public without any further Commission approval. The Commission would no longer have to consider how the provision of those services could affect PG&E's continued provision of electric and gas services. Before granting PG&E's Application, the Commission should thoroughly examine whether such an outcome would be in the public interest.

C. The Commission Should Consider How PG&E's Gas and Electric Ratepayers Should Be Compensated for PG&E's Use of Its Existing Communications Facilities to Provide Certificated Communications Services

In its Application, PG&E goes to great lengths to show how it intends to share the revenues from its telecommunications business between PG&E's shareholders and its electric and gas

[6] *See*, *e.g.*, Decision 02-07-026, *Application of Pacific Gas and Electric Company for Commission Approval of Two Irrevocable License Agreements to Permit Use of Utility Support Structures, Optical Fiber and Equipment Sites to IP Networks, Inc*., 2002 WL 31007768 (Cal.P.U.C. July 17, 2002).

ratepayers.[7] PG&E's plan is that its after tax revenues would be split 50/50 between those groups, while all "incremental costs of developing, marketing, and offering telecommunications services" would be allocated to shareholders.[8] Whether or not these allocations would be fair is one issue, but PG&E does not address a related issue. PG&E's ratepayers have likely spent millions of dollars to build out PG&E's communications infrastructure. PG&E appears to believe that it is fair and reasonable for PG&E to use this infrastructure for other purposes without compensating ratepayers.

Before granting PG&E's Application, the Commission should consider whether PG&E's gas and electric ratepayers will be fully compensated for PG&E's use of its communications facilities to provide certificated telecommunications services. The Commission should also consider how ratepayers will be protected from the ongoing risks of the new line of business PG&E proposes.

III. CONCLUSION

San Francisco appreciates the opportunity to advise the Commission about its concerns over PG&E's Application and respectfully requests that the Commission thoroughly consider San Francisco's concerns before deciding whether to grant this Application. At a minimum, there are important factual, policy, and legal issues to be considered, perhaps through an evidentiary hearing.

Dated: May 15, 2017

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[7] *See* Application at 16-23.

[8] Application at 18.

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