

**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)

**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**

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August 22, 2018

**RESPONSE OF THE UTILITY REFORM NETWORK AND THE CALIFORNIA
ASSOCIATION OF COMPETITIVE TELECOMMUNICATIONS COMPANIES
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On April 6, 2017, Pacific Gas and Electric Company (PG&E) filed the instant application, seeking to obtain a Certificate of Public Convenience and Necessity (“CPCN”) in order to become a competitive local exchange carrier (“CLEC”) and provide full facilities-based and resold competitive local exchange access and non-dominant interexchange services. On August 7, 2018, PG&E filed a motion seeking to withdraw its application, in which it claims that the utility’s circumstances have significantly changed since April 2017, and states that it “no longer believes that pursuing a CLEC business, at this time, is a prudent business decision.”¹

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (“TURN”) and the California Association of Competitive Telecommunications Companies (“CALTEL”) submit this response to PG&E’s motion. TURN and CALTEL do not oppose withdrawal of the application or similar action that would bring this proceeding to a close, so long as the order permitting withdrawal also adopts conditions that would apply should PG&E determine to pursue a CLEC business at some later date. The manner in which PG&E chose to present and pursue a CPCN here presented difficulties that can and should be avoided in the future. TURN and CALTEL believe that adopting appropriate conditions now can reasonably be expected to avoid some of those difficulties.

¹ PG&E Motion to Withdraw, p. 2 [emphasis added].

I. Background and Context for Requested Conditions

In determining the appropriate conditions to attach to an order permitting withdrawal of PG&E's application, the Commission should consider the context in which the request arises.

To that end, TURN and CALTEL briefly review key elements of the proceeding.

- PG&E's application, when filed and served on April 6, 2017, did not include prepared testimony.
- Several parties' protests (particularly the protests of TURN and CALTEL) raised concerns about the lack of detail or factual support in PG&E's application. TURN's protest identified a need for additional cost information associated with the utility's ability to rely on its ratepayer-funded infrastructure, both to gauge the competitive impacts of any potential CLEC activity and to determine a reasonable revenue sharing between PG&E shareholders and ratepayers. TURN also called for more detailed information regarding PG&E's business plans for its new venture.² CALTEL's protest raised a number of concerns regarding the potential adverse effect PG&E's CLEC activities could have on its members, including non-discriminatory access to PG&E poles and conduit, and also raised the need for clarification of the types of services that PG&E proposes to provide and further information regarding PG&E's claims of salutary benefits on competition even as it purported to serve only 1-5 customers.³
- The Scoping Memo of July 13, 2017, identified a number of issues regarding fundamental points on which the Commission sought more specific information from the utility, and directed PG&E to prepare testimony on those points. For example, PG&E was to provide data and testimony identifying the specific services it intended to provide if the CPCN is granted, as well as projections of the number of customers and the net and gross revenues it expects to receive from telecommunication services in the first five

² TURN Protest, pp. 2-4 and 9-11.

³ CALTEL Protest, pp. 3-12.

years of offering those services.⁴ PG&E was also directed to describe its plans for building new capacity to support its telecommunications business, to identify the specific facilities it intended to use to provide such telecommunications services, and to address a number of competitive concerns including non-discriminatory access for competitors and cross-subsidization of the CLEC business by PG&E's gas and electric customers.⁵

- PG&E's testimony, served September 21, 2017, explained that the utility had no specific business plan for its CLEC telecommunications services offerings. The utility had deliberately adopted an approach that did not rely on its investigation of specific offerings, in an effort to "minimize its exposure from evaluating the potential new business."⁶ Instead, PG&E opted to break the development of its proposed CLEC into "stage gates," with a CPUC approval of a CPCN to the proposed CLEC preceding development of any formal sales plan or adoption of any specific business plan.⁷ Thus, when called upon to provide forecasts of CLEC gross and net revenues, the utility described the figures it provided as follows: "These numbers are illustrative and are not based on a business plan, and will very likely change materially in the event PG&E's CLEC application is approved and a business plan is developed."⁸
- The responsive testimony submitted by intervenors on November 22, 2017 raised a number of concerns regarding the completeness and quality of PG&E's showing. For example, CALTEL's testimony pointed out that PG&E had not met the basic statutory requirements imposed on all CLECs to obtain a CPCN, and had not provided any detailed business plan information.⁹ CALTEL also raised concerns about the deficiency of PG&E's showing regarding providing non-discriminatory access to its facilities and other

⁴ Scoping Memo, pp. 3-4.

⁵ *Id.*, pp. 5-7.

⁶ PG&E Direct Testimony, p. 2-4.

⁷ *Id.*, pp. 2-4 to 2-5.

⁸ *Id.*, pp. 3-4 to 3-5.

⁹ CALTEL Testimony, p. 4.

critical competitive issues.¹⁰ TURN’s testimony raised concerns about PG&E’s proposal to rely on a “stage gates” approach that would have some of the more critical elements of its effort fleshed out only after the utility had obtained CPUC approval of a CPCN.¹¹

- Shortly after PG&E served rebuttal testimony on December 6, 2017, CALTEL, ORA and TURN engaged in settlement discussions with the utility, an effort to which the parties devoted substantial time and resources during 2018. In the view of CALTEL, ORA 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.
- On August 2, 2018, the assigned ALJ issued a ruling finding PG&E’s application “insufficient to establish that PG&E has met the certification requirements to merit approval of the Application,” and directing PG&E to provide more detailed information on a variety of topics. For example, the ruling sought a detailed description of the services PG&E intended to provide should it be granted a CPCN, and a more detailed estimate of the number of customers expected after one and five years of operation (noting that PG&E’s prior statement on the latter topic was “overly vague”).¹²
- On August 7, 2018, PG&E filed its motion seeking to withdraw its application without prejudice. In its motion, PG&E once again cited its “measured ‘stage gates’ approach,” and specifically the proposal to obtain Commission approval of a CPCN prior to the development of more detailed plans, as an attribute of its proposal.¹³

¹⁰ *Id.*, p. 5.

¹¹ TURN Testimony, p. 2.

¹² ALJ Ruling Requiring Applicant to File a Response to Information Request Within 30 Days (8/2/18), pp. 2-3.

¹³ PG&E Motion, pp. 4-5.

II. Argument for Conditions

The Commission should only grant the motion to withdraw subject to explicit conditions in order to minimize the risk of repeating the negative experience of this proceeding. The conditions should address the minimum showing PG&E would be required to include in its initial application and concurrently served supporting testimony should it choose to seek a CPCN for similar CLEC services in the future.

A consistent theme throughout this proceeding has been that the paucity of information provided by PG&E regarding its proposals created difficulties for parties seeking to meaningfully review, understand and critique those proposals. The formal rulings directing the utility to provide further information as to its specific plans and criticizing the vague nature of PG&E's presentation seem to indicate the Commission's concern that the inadequacy of the information provided to date would hinder its ability to meaningfully understand and consider PG&E's proposal as well. Absent a clear directive that such an approach must not be repeated should PG&E return in the future for CLEC authority, the Commission unduly risks a repeat of this unsatisfactory experience.

In the view of TURN and CALTEL, it was not just one instance, but rather a continuing pattern of inadequacy and incompleteness regarding the utility's showing. The application was served with no supporting testimony. Once directed to serve testimony, PG&E produced material that failed to fully address the matters on which testimony was called for by the Scoping Memo. In response to intervenor testimony calling for presentation of a "business plan" regarding PG&E's proposed CLEC activities, the utility provided no further detail, instead responding that such a plan is not required at this time.¹⁴ The general inadequacy of the utility's

¹⁴ PG&E Rebuttal Testimony, pp. 2-5 to 2-6.

showing was confirmed most recently by the August 2, 2018 ALJ Ruling recognizing that the material submitted in the utility's testimony served to date failed to address fundamental certification requirements, such that more detail would have been required had PG&E gone forward with the application.

TURN and CALTEL understand that PG&E determined that it would work best for the utility if it were able to obtain regulatory approval before committing additional resources to pursuing the offering of CLEC services. However, the approach it chose came at an unacceptable price in terms of consuming significant intervenor resources, hindering meaningful review of the proposal or development of better-suited alternatives, whether by interested parties or, ultimately, the Commission. PG&E's "stage-gate" also placed parties and the Commission in the untenable position of approving the utility's proposal and then finding out later if the various elements produced reasonable results from the perspective of the regulator and interested parties. As the regulated utility seeking authority to engage in such activities, the burden of demonstrating a reasonable likelihood of success lies with PG&E.

Therefore, the Commission should take steps now to ensure that, if and when PG&E chooses to return to the Commission for a CPCN to offer CLEC services or for any similar relief, the utility's showing will avoid some of the pitfalls that have emerged from the experience in this application proceeding. To that end, the Commission should at a minimum adopt the following conditions in any decision permitting withdrawal of the current application:

1. PG&E's initial showing must satisfactorily and substantively 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 gate" approach in favor of a showing that includes an initial business plan, including a detailed description of

the proposed services, a detailed Chart of Accounts for the CLEC operation, and a detailed specification of which costs PG&E would treat as (1) “incremental” and (2) non-“incremental” for purposes of cost recognition and potential revenue sharing proposals.

3. The Commission should require PG&E to describe how its current processes for providing access to PG&E support structures on a nondiscriminatory, first-come, first-served basis will be modified to ensure that a PG&E CLEC, if granted a CPCN, will not be able to leverage its access to information and to internal PG&E employees, processes and procedures to provide it with competitive advantages over other similarly-situated third-party attachers. This should include specific, verifiable commitments to put in place safeguards, including methods and procedures, updated training, communications firewalls, etc., to ensure that a PG&E CLEC does not receive preferential treatment, but rather receives treatment at parity with other similarly-situated attachers.

III. Conclusion

For the reasons set forth above, TURN and CALTEL urge the Commission to adopt necessary conditions applicable to any future CLEC-related application as part of a decision permitting PG&E to withdraw its current application.

August 22, 2018

Respectfully submitted,

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