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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Crown Castle NG West LLC (U6745C)
Pursuant to Decision 98-10-058 for
Arbitration of Dispute Over Denial by
Pacific Gas and Electric Company
(U39E) of Access to Utility Support
Structures.

Application 18-10-004

ADMINISTRATIVE LAW JUDGE'S RULING

Crown Castle NG West LLC (Crown)¹ filed this application on October 10, 2018, to request arbitration, under the expedited dispute resolution procedures established by D.98-10-058,² in which the Commission adopted rules to ensure that large and mid-sized incumbent local exchange carriers (ILECs), investor-owned electric utilities³ and local governments grant CLECs such as

¹ Crown (then named NextG Networks of California, Inc.) received authorization to provide limited facilities based services as a non-dominant interexchange carrier in D.03-01-061 and was granted authority as a full facilities based carrier in D.07-04-045. Crown is a competitive local exchange carrier (CLEC).

² See D.98-10-058 dated October 22, 1998 in rulemaking R.95-04-043 ("ROW Decision"). The ROW Decision provides that arbitration disputes thereunder shall generally follow arbitration rules adopted as Rule 3 of Resolution ALJ-174.

³ Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Edison Company (Edison) are the major electric utilities in California.

Crown, nondiscriminatory access to poles, ducts, conduits and rights-of-way (ROW).

The parties filed a Joint Statement of Unresolved Issues dated October 29, 2018.⁴

As provided in ALJ-174, an initial arbitration meeting was held on October 30, 2018 with the Administrative Law Judge assigned as arbitrator (ALJ arbitrator). Immediately after the initial arbitration meeting, the parties met, conferred and jointly provided the ALJ arbitrator with proposed mutually agreeable arbitration dates by email.⁵ An arbitration hearing is now set for November 28 - 29, 2018.

Documentation for the Arbitration Hearing

The parties have not yet provided the ALJ arbitrator with their proposed agreement as required in paragraph IX “Expedited Dispute Resolution Procedures” of Appendix A to the ROW Decision and subsection c of Rule 3.3 under ALJ-174.

The parties are ordered to meet and confer (telephonically or in person) before the arbitration hearing, to prepare the agreement language. As provided in the ROW Decision procedures and Rule 3.6 under ALJ-174, the parties are to prepare a single-text “mark-up” document containing the language upon which

⁴ See The ROW decision requires a revised arbitration statement, which is referred to as a Revised Statement of Unresolved Issues in ALJ 174 - Rule 3.8.

⁵ The ROW Decision requires that arbitration hearings be conducted within 25-27 days after the application is filed and ALJ-174 rule 3.9 requires that the arbitration be held within 10 days after the Response is filed. However, the Commission’s Rules provide that parties may make a motion for extension of time orally, by email or by letter to the ALJ. The email is deemed a Motion for Extension of Time. See Commission Rule 11.6. In addition, ALJ 174 rule 3.14 gives the arbitrator authority to change the arbitration schedule.

the parties agree or disagree, with the applicant's (Crown's) proposed language bolded and the respondent's (PG&E's) proposed language underscored.⁶

Mark-Up Conference

The initial portion of the first day of the arbitration hearing shall be utilized as a mark-up conference, during which the ALJ arbitrator will hear the concerns of the parties, and endeavor to determine whether the parties can further resolve their differences. As the parties resolve their differences and reach agreement, the ALJ arbitrator will place such agreements on the record.

Limited Evidentiary Hearings

During the mark-up conference, if the parties identify factual issues that they are unable to resolve, the ALJ arbitrator shall convert the mark-up conference into limited evidentiary hearings. Such evidentiary hearings shall begin on the same day as the mark-up conference and shall continue the following day, as needed.

The mark-up conference and evidentiary hearing shall conclude within three days, unless the ALJ arbitrator determines otherwise.

⁶ Rules 3.6 and 3.7 of ALJ-174, as well as the procedures under the ROW Decision, contemplate that the parties would meet and confer upon the mark-up document in order to prepare a revised statement of unresolved issues within 7 days of receiving PG&E's response. However, the parties may bring their revised statement of issues to the first day of the arbitration conference.

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IT IS SO RULED.

November 19, 2018, at San Francisco, California.

/s/ PATRICIA B. MILES

Patricia B. Miles
Administrative Law Judge