

**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 )      Application 18-10-004  
Gas and Electric Company (U39E) of Access to )  
Utility Support Structures. )  
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**CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION  
COMMENTS ON DRAFT ARBITRATOR'S REPORT**

JUSTIN WYNNE  
LAURA FERNANDEZ  
Braun Blasing Smith Wynne, P.C.  
915 L Street, Suite 1480  
Sacramento, CA 95814  
(916) 326-5812  
fernandez@braunlegal.com  
Attorneys for the  
CALIFORNIA MUNICIPAL UTILITIES  
ASSOCIATION

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would be outside the jurisdiction of the Commission and a poor policy decision that would set bad precedent. CMUA does not comment on and takes no position on the underlying dispute in this proceeding.

## II. COMMENTS ON THE DRAFT ARBITRATOR’S REPORT

The DAR asserts that “[t]ransactions concerning the sale or lease of utility property (such as the transaction at issue between [Pacific Gas and Electric Company (“PG&E”)] and Crown Castle here), are . . . within the Commission’s jurisdiction under Public Utilities Code Section (Pub. Util. Code §) 851.”<sup>1</sup> CMUA does not take a position on this interpretation. However, CMUA does object to the DAR’s direction that NCJPA (separate and apart from PG&E) must “submit (before implementation) for Commission review and approval under Pub. Util. Code § 851, its agreements, forms, procedures and handbooks which concern the transfer, sale, lease, assignment, mortgage, or encumbrance of public utility poles.”<sup>2</sup> Such direction is not and cannot be supported; the DAR’s underlying assertion that “[s]uch transactions, which are being handled by NCJPA on behalf of its members, are clearly within the Commission’s jurisdiction” is incorrect.<sup>3</sup>

If adopted, this direction in the DAR would expand the Commission’s jurisdiction to entities beyond the authority of the Commission. NCJPA is not a public utility, but rather a joint pole association (“JPA”) that members voluntarily participate in. As the DAR acknowledges, “NCJPA is comprised of municipalities, irrigation districts, electric utilities, telephone companies, wireless companies and cable providers, some of which are entities regulated by the Commission, and some of which are nonregulated entities.”<sup>4</sup> The authority provided to the Commission by section 851 only applies to “public utilities” and does not extend to POUs or to

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<sup>1</sup> DAR at 2.

<sup>2</sup> *Id.* at 8-9.

<sup>3</sup> *Id.* at 9.

voluntary organizations like NCJPA. Moreover, the Right-of-Way Decision 98-10-058 (“ROW Decision”), which is discussed in the DAR, also confirms that the Commission does not have authority to regulate POUs with respect to access to their poles, ducts, conduits, and ROW.<sup>5</sup> Membership in the NCJPA is voluntary; if NCJPA were required to submit all of its agreements, forms, procedures and handbooks to the Commission for preapproval, that would grant the Commission authority over agreements involving other entities that voluntarily participate in the NCJPA, including the POUs that are clearly outside the scope of Section 851 and the Commission’s jurisdiction. The Commission cannot require NCJPA agreements, forms, procedures and handbooks to be pre-approved by the Commission, since these are utilized by CPUC-jurisdictional and non-jurisdictional utilities alike.

Regulating this voluntary organization is outside the scope of the Commission’s authority. Instead of attempting to directly regulate NCJPA, the Commission could achieve the same ends by requiring PG&E or other Commission-jurisdictional entities to submit the NCJPA agreements, forms, procedures, and handbooks as part of a lease or purchase transaction review under Public Utilities Code section 851. Further, if the Commission required PG&E to submit the NCJPA agreements, forms, procedures and handbooks and the Commission subsequently determined that NCJPA methods and/or procedures were unacceptable, the Commission could direct PG&E or other jurisdictional utilities to propose revisions to the NCJPA documents in accordance with the charter of that organization, or to alternatively withdraw from NCJPA and instead use Commission-approved methods for pole lease/sale. While the Commission does not have direct jurisdiction over NCJPA’s rules and procedures, the Commission can still have significant impacts through the authority it does have over its jurisdictional utilities.

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<sup>4</sup> *Id.* at 2, footnote 5.

NCJPA and SCJPC are valuable industry organizations that provide necessary services that reduce costs and administrative burdens. The Commission should not upend these longstanding organizations because of a dispute between two entities. Imposing direct Commission regulation over such an organization could threaten the very existence of NCJPA and the vast number of associated agreements between its members. Further, such an action by the Commission would set a troubling precedent, potentially exposing any trade or industry group that involves a public utility to direct regulation by the Commission.

The Arbitrator’s conclusion that “such transactions, which are being handled by NCJPA on behalf of its members, are clearly within the Commission’s jurisdiction,”<sup>6</sup> is overly broad, not supported by statutory authority and bad public policy. The Commission should not attempt to insert itself into the agreements, contracts or transactions of non-jurisdictional entities, like POU’s, where it lacks the authority to do so. The claim by the DAR that NCJPA (and by extension any other JPA) and their activities fall within jurisdiction of the Commission cannot be supported by statute, would present operational challenges, and would dilute the ability of POU’s to act to advance their customers’ best interests.

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<sup>5</sup> ROW Decision at 19 (“We conclude that it is beyond the authority of this Commission to regulate municipally-owned utilities with respect to nondiscriminatory access to their poles, ducts, conduits, and ROW.”)

<sup>6</sup> DAR at 9.

### III. CONCLUSION

CMUA appreciates the opportunity to submit these comments to the Commission.

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Respectfully submitted,

/s/ Laura Fernandez

Laura Fernandez  
Braun Blaising Smith Wynne, P.C.  
915 L Street, Suite 1480  
Sacramento, CA 95814  
(916) 326-5812  
fernandez@braunlegal.com  
Attorneys for the  
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