

Decision 19-03-004 March 14, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 (U-39-E) of Access to Utility Support Structures.

Application 18-10-004

DECISION AFFIRMING ARBITRATOR'S REPORT AND ORDER THAT PARTIES ADOPT REVISED LICENSE AGREEMENT

Summary

This decision affirms the final arbitrator's report determining that Pacific Gas & Electric Company (PG&E) satisfies its responsibility under Decision 98-10-058, to grant nondiscriminatory access to Crown Castle NG West LLC (Crown Castle), a competitive local carrier (CLC),¹ by offering Crown Castle the opportunity to lease space on its poles pursuant to PG&E's Overhead Facilities License Agreement (License Agreement), which the Commission has accepted as nondiscriminatory.²

¹ Crown Castle NG West LLC (U-6745-C) and Sunesys, LLC (U-6991-C) assets were consolidated into Crown Castle Fiber LLC (U-6190-C), by Advice Letter dated February 5, 2019. Crown Castle Fiber is authorized to provide telecommunications services in California effective January 9, 2019. For purposes of this Decision and Order, Crown Castle Fiber and Crown Castle NG West LLC are referred to as Crown Castle.

² See Advice Letter 2982-E, filed by PG&E on February 13, 2017 at <https://www.pge.com/notes/rates/tariffs/2007-e.shtml>.

The arbitrator ordered the parties to craft an arbitrated License Agreement reflecting mutually agreeable terms for leasing space on PG&E's poles. The parties inexplicably failed to submit such an agreement. In lieu of an arbitrated License Agreement, we adopt herein the revised License Agreement proposed by Crown Castle.

PG&E submitted its standard form License Agreement with no revisions. The revised License Agreement proposed by Crown Castle reflects the substantive terms in PG&E's License Agreement, but revises Sections 3.1(b), 3.2, 4.5, 7.4(b) and 7.4(c) to specify terms desirable to Crown Castle. PG&E has not stated any disagreement to the revisions that Crown Castle proposes.

Accordingly, we adopt as the arbitrated License Agreement, the revised License Agreement proposed by Crown Castle. (*See Attachment 1*).

Findings of Fact

1. A key principle of Decision 98-10-058 (Right of Way (ROW) Decision) is that CLCs should have rights to obtain access to utility poles and support structures at reasonable terms and prices which do not impose a barrier to competition.
2. One objective of the ROW Decision is to set forth a general set of rules governing ROW access which would give parties discretion to tailor specific terms to the demands of their individual situations.
3. The Commission notes in the ROW Decision that, differences are acceptable as long as they do not merely reflect anticompetitive discrimination among similarly situated carriers.
4. This arbitration proceeding involves two regulated parties subject to the Commission's jurisdiction.

5. Under the ROW Decision, parties may craft whatever terms they might agree upon within the broad concerns of nondiscriminatory access, because their agreement is ultimately subject to Commission approval.

6. The Final Arbitration Report ordered the parties to submit an arbitrated License Agreement.

7. PG&E's License Agreement complies with the ROW Decision's nondiscriminatory access requirements.

8. The revised License Agreement by Crown Castle substantively incorporates PG&E's License Agreement.

9. PG&E has not objected to Crown Castle's revisions to its License Agreement.

Conclusions of Law

1. The revised License Agreement by Crown Castle substantively incorporates PG&E's License Agreement, therefore, it also does comply with the ROW Decision's nondiscriminatory access requirements.

2. The revisions to the License Agreement are within Crown Castle's right to obtain access to utility poles and support structures at reasonable terms and prices which do not impose a barrier to competition.

3. The revised License Agreement is acceptable as the Arbitrated Agreement that the Final Arbitrator's Report requires.

O R D E R

IT IS ORDERED that:

1. The paragraph immediately following the bullet point bold heading
 - **For Underground Facilities** - [Intentionally omitted] in Section 3.1(b) of the License Agreement is revised by changing the last sentence to read:

“Permittee shall not install any Attachments on or in the Company Facilities without first securing the Company’s written authorization, **unless 45 days have run from the time of request of access and Company has provided no response.**”

2. The first sentence of Section 3.2 of the License Agreement is revised to read:

“Permittee shall not install any additional Attachments on or in the Company Facilities without first securing the Company’s written authorization, unless 45 days have run from the time of request to install and Company has provided no response.”

3. Section 4.5 Maintenance of Attachments is revised to read:

“Permittee shall, at its sole expense, keep in good repair and maintain its Attachments. Permittee shall also operate and maintain its Attachments in conformity to CPUC General Orders, the National Electrical Safety Code, the National Electrical Code and all other applicable ordinances, statutes, regulations and laws. If the Company determines that Permittee is not in compliance with any of these applicable requirements, the Company shall inform Permittee in writing and such Hazardous Conditions shall be remedied per Sections 4.1(a) or (b). ~~Permittee shall notify the Company forty eight (48) hours in advance by calling the Company’s designated representative before any routine repair or maintenance of its facilities is performed on the Company Facilities when an electric service shutdown is not required.~~ If an electric service shutdown is required, the Permittee shall arrange a specific schedule with the Company prior to performing any work on the Company Facilities. Emergency restoration of service and maintenance shall be performed per Section 7.7.”

4. Section 7.4(b) New Permittees is revised to add the following language to the end of that section, and to add a second paragraph so that it reads:

“When rearrangement and/or larger or additional pole(s) or anchors are necessitated by the installation of an Attachment by a new Company permittee, the larger pole and relocation of the Company’s and its permittee’s attachments shall be installed and/or transferred at the expense of the new permittee to the extent allowed

by law. **However, Company is not authorized to undertake any rearrangement or relocation work on any pole occupied by Permittee without written approval by Permittee.**

When a new Company permittee or other attacher requests access to a pole on which Permittee is attached, Company is required to provide Exhibit A or similar request for access, without identifying Company permittee, to Permittee within 30 days of the Company receiving Exhibit A or similar request for access."

5. A new paragraph is added to Section 7.4(c) Other Causes of Rearrangement/Replacement to read:

"Replacement may be made at the written request of Permittee, and adjustment as to sales, salvage, pulling, transportation, and transfer costs shall be at current prices as per date of replacement. Company will execute replacement within sixty (60) days of Permittee's advance written request or less if circumstances require."

6. The parties shall execute the revised License Agreement (Attachment 1) to this Decision and return a copy of the duly executed agreement to the Commission's Director of Communications Division by e-mail to cdcompliance@cpuc.ca.gov within 14 days of the date of this Decision.

7. Application18-10-004 is closed.

This order is effective today.

Dated March 14, 2019, at Coachella, California

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners