

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of Crown Castle NG West LLC
(U-6745-C), 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

**COMMENTS OF CROWN CASTLE FIBER LLC ON PROPOSED DECISION
AFFIRMING ARBITRATOR'S REPORT**

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Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Crown Castle Fiber LLC (U-6190-C) (“Crown Castle”)¹ respectfully submits these comments on the *Proposed Decision Affirming Final Arbitrator’s Report and Order that Parties Adopt Revised License Agreement Draft Arbitrator’s Report* (“Proposed Decision”) issued September 9, 2019.

I. INTRODUCTION

As an initial matter, Crown Castle reasserts that the Commission should adopt the Crown Castle Proposed Agreement, Exhibit Crown-2, submitted into evidence during the evidentiary hearing, which would ensure Crown Castle could *purchase* pole space from PG&E. The Crown Castle Proposed Agreement addresses directly the fact that PG&E’s stated refusal to sell pole space to Crown Castle² is both discriminatory and unnecessarily forces costs and obligations to Crown Castle.³

¹ While the present proceeding was initiated by Crown Castle NG West LLC (U-6745-C), the California operations and assets of that entity, were consolidated into Crown Castle Fiber LLC (U-6190-C) on December 31, 2018, as set forth in Advice Letter No. 71(submitted October 25, 2018) of Crown Castle NG West LLC (effective November 24, 2018).

² See Ex. PG&E-1 at 8:17-18 (De Teresa/PG&E Rebuttal Testimony) (“PG&E has concluded that it can no longer offer Crown Castle with any terms of sale....”).

³ See *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* at Section IV.

However, in light of PG&E's refusal to sell space to Crown Castle on its solely-owned poles, and prior refusal to negotiate an agreement reflecting mutually agreeable terms, Crown Castle generally supports the Revised License Agreement, set forth in Attachment 3 to the Proposed Decision, with certain exceptions. Namely, Crown Castle urges the Commission to revise the Ordering Paragraphs to align with the current language in Section 4.5 of the Revised License Agreement, which excludes the burdensome notice requirement.

II. THE ORDERING PARAGRAPHS SHOULD BE REVISED TO ALIGN WITH SECTION 4.5 OF THE REVISED LICENSE AGREEMENT.

The Proposed Decision adopts the Revised License Agreement (Attachment 3), which *removes* the following language from Section 4.5 of the original agreement (Attachment 2): “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.” Crown Castle supports the Proposed Decision adoption of the Revised License Agreement, which removes this burdensome language in Section 4.5. However, while the Ordering Paragraphs in the Proposed Decision reflect the other modifications in the Revised License Agreement, it does not currently capture this change to Section 4.5. The prior decision in this proceeding, Decision 19-03-004, Ordering Paragraph 3, acknowledged the modification to Section 4.5.⁴ Crown Castle asks that the Commission revise the Ordering Paragraphs to, again, acknowledge the revisions to Section 4.5, as set forth in the Revised License Agreement.

As a threshold matter, these modifications are needed to ensure consistency between the Revised License Agreement and the Ordering Paragraphs. Additionally, there are important legal and policy reasons for effectuating these changes. There are no requirements in Decision

⁴ See D.19-03-004 at 4 (Ordering Paragraph 3).

98-10-058 (“ROW Decision”) related to prior notice for repair and maintenance of facilities. With good reason, any requirement for Crown Castle to wait a minimum of two days before repairing its facilities would negatively impact the reliability of Crown Castle’s service, prevent the company from meeting the service level commitments in its contracts (many of which require immediate repair), and generally reduce the quality of service it provides to its carrier customers.⁵

The notice requirement in Section 4.5 also puts Crown Castle at a distinct competitive disadvantage as compared to incumbent local exchange carrier (“ILEC”) pole-owners, like AT&T, who have no prior notice requirement,⁶ and who can promise customers immediate repair of service outages requiring access to equipment. Moreover, there is no evidence in the record that there is a greater need for a telecommunications pole tenant (as opposed to a telecommunications pole-owner) to provide notice before conducting maintenance and repair work. The removal of the notice language in Section 4.5 is essential for Crown Castle to ensure superior reliable service and compete on a level playing field with ILEC pole-owners, who already benefit from these provisions through agreements governing joint pole-ownership.⁷ These are all key attributes to any lawful agreement as the Proposed Decision itself recognizes.⁸

⁵ See Crown Castle Ex. 1, at 7 (Scandalis Testimony).

⁶ See 11/29/18 Tr. at 87:14-21 (PG&E/De Teresa) (“Q...the need to provide PG&E with 48 hours advance notice prior to performing work on poles, is this an obligation of tenancy that would not be an obligation if Crown was an owner?...A. The answer is yes.”).

⁷ *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* at 15 & 21.

⁸ Proposed Decision at 3 (Conclusions of Law 2-3):

2. The Revised License Agreement complies with the Arbitrator’s Orders because it: (1) will not constrain Crown Castle’s goals to rapidly deploy broadband; (2) it will permit Crown Castle to continue to provide reliable service for its customers; and (3) it will enable Crown Castle to fulfill its goal to compete within the highly competitive California marketplace.

III. CONCLUSION

For the reasons stated above, Crown Castle requests that the Commission add an Ordering Paragraph that acknowledges the modification to Section 4.5 in the Revised License Agreement, which now excludes the burdensome notice requirement.

Respectfully submitted September 30, 2019 at San Francisco, California.

/s/

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3. The Revised License Agreement preserves 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.

APPENDIX A

Proposed Revisions to the Proposed Decision

Add new Ordering Paragraph which will read as follows:

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.”