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 (Filed: October 10, 2018)

RESPONSE OF CROWN CASTLE FIBER LLC IN OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST TO FILE REPLY BRIEF

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Pursuant to Rule 11.1 of the California Public Utilities Commission Rules of Practice and Procedure, Crown Castle Fiber LLC (U-6190-C) ("Crown Castle")[1] respectfully opposes Pacific Gas and Electric Company's ("PG&E") Request to File Reply Brief ("Request") filed on April 15, 2019. Crown Castle requests that the Commission deny PG&E's Request because: (i) the Commission provides no express opportunity to reply to a response to an application for rehearing and disfavors such pleadings, (ii) the one case PG&E uses to buttress its Request makes clear that such requests should be denied, and (iii) any approval of the Request would allow PG&E to improperly relitigate positions that have already been resolved and unlawfully expand the record which has already closed. While Crown Castle contends that no reply from PG&E is warranted, should the Commission grant PG&E's Request, Crown Castle seeks the Commission's leave to file a sur-reply.

As an initial matter, it is unclear what PG&E seeks in its Request. PG&E styles the pleading as a request to file a "reply brief" but there is no mention in the Request of the post-hearing briefs filed by PG&E or Crown Castle on December 11, 2018, so presumably PG&E does not seek to file a reply to the post-hearing briefs. Rather, the Request focuses squarely on

[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 of Crown Castle NG West LLC (effective

the *Response of Crown Castle Fiber LLC to Pacific Gas and Electric Company's Application for Rehearing of Decision 19-01-004* ("Response to AFR"). For that reason, Crown Castle believes that what PG&E actually seeks is to reply to the Response to AFR. Such a request is inappropriate and should be denied for the reasons described below.

First, the Commission provides no express opportunity to file replies to responses to applications for rehearing, and such replies are disfavored by the Commission. PG&E improperly cites to Rule 16.4(g) to bolster the Request, but that rule is inapplicable here. Rule 16 applies to petitions for modifications, but PG&E has not filed a petition for modification—it filed an application for rehearing. This distinction is important because the Commission provides no opportunity under its rules to file a reply to response to an application for rehearing, and such replies are disfavored.[2] The time for filing an application has passed and Crown Castle, in its Response, added no new substantive material that was not already in the record. Thus, there is no good cause for PG&E's Request.

Second, it is telling that the one case PG&E cites to support its Request actually provides a precedent to deny PG&E's Request. PG&E states in its Request that in D.93-11-072 "the Commission took the reply comments into account in its decision on the application." *PG&E's statement is simply not true*. In fact, the Commission stated in that case:

November 24, 2018). Accordingly, Crown Castle Fiber LLC is a "party," eligible to file the present response, under Rule 16.2 of the California Rules of Practice and Procedure.

[2] *In re Rulemaking to Integrate & Refine Procurement Policies*, D. 15-11-046, mimeo at 3 ("Neither the Public Utilities Code nor Commission Rules of Practice and Procedure make any provision for replies to responses to an application for rehearing. Accordingly, such pleadings are generally not permissible and we will not consider them here. Even if we did, the Motion merely reiterates the Joint Parties arguments...."); *Hypercube Telecom*, D.11-07-033, mimeo at 3 ("The Commission's Rules of Practice and Procedure do not provide for replies to responses to applications for rehearing and the Commission does not ordinarily accept such replies. In any event, Hypercube has not demonstrated good cause why the Commission should accept such a filing in this case. Therefore, we deny Hypercube's motion.").

> Good cause *not* having been shown, the motion of Southern California Utility Power Pool and Imperial Irrigation District for leave to file comments on the response of Southern California Gas Company to the application of City of Vernon for rehearing of D.93-05-008 is *denied*.[3]

As demonstrated by the plain language of the case cited by PG&E, the Commission disfavors replies to a response to application for rehearing. PG&E presents no good cause for the Commission to reverse in this instance its long-standing policy disfavoring replies.

Third, in addition to the fact that Commission rules and decisions disfavor the type of reply that PG&E seeks, it would be harmful to the administrative process for the Commission to grant PG&E's Request. Indeed, PG&E seeks in its reply to relitigate positions presented during the course of the proceeding[4] – something forbidden under Commission policy governing rehearing.[5] Moreover, PG&E seeks to introduce significant unsubstantiated facts and arguments that were neither present in the record, nor in PG&E's application for rehearing.[6] This is problematic because governing law limits rehearing to the evidence on the record,[7] and the record in this proceeding closed upon approval of Decision 19-01-004.

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[3] D.93-11-072, 1993 Cal. PUC LEXIS 798 at *49 (Ordering Paragraph 1) (emphasis added).

[4] For example, PG&E dedicates an entire section of its proposed reply to why the terms contravene "preferred outcomes." As discussed in the Response to AFR: "PG&E raised the issue of preferred outcomes in its brief and the Commission appropriately considered the record and approved the Arbitrated License Agreement, notwithstanding PG&E's argument, in keeping with the tenets of the ROW Decision." *See* Response to AFR at 6.

[5] *See, e.g.*, D.16-05-053, mimeo at 16 ("The purpose of a rehearing application is to specify legal error, not to relitigate issues already determined by the Commission.")

[6] For example, in Attachment A to the reply, PG&E seeks to introduce entirely new factual evidence about the burden of accommodating a 60-day timeframe for pole replacement. As Crown Castle already noted in the Response to AFR (and in its filing of the Revised License Agreement on the record), ILEC pole owners already have the authority as a joint owner to initiate pole replacement when necessary. PG&E's factual assertions are both an improper attempt to expand the record and lack merit.

[7] Pub. Util. Code § 1757(a) ("(a) No new or additional evidence shall be introduced....").

In the same way that the Request is procedurally deficient and misrepresents the law, the reply attached to the Request also contains several misrepresentations of the law[8] and factual inaccuracies.[9] Nevertheless, given that the Request is procedurally deficient and that PG&E offers no good cause for allowing otherwise disfavored additional pleadings, Crown Castle will abstain from addressing each of the problematic aspects of the reply at this point. However, if the Commission were to grant the Request, Crown Castle asks that the Commission also grant Crown Castle the opportunity to file a sur-reply to address the many problematic aspects of the reply attached to PG&E Request.

I. CONCLUSION

For the reasons stated above, the Commission should deny the Request.

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

/s/

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[8] For example, PG&E mischaracterizes the ROW Decision review timelines by opining that "The trigger for the 30-day Commission review is the issuance of a Final Arbitration Report resolving all disputed issues." Request at 4. The actual language of the ROW Decision states: "*Within 30 days following filing of the arbitrated agreement*, the Commission *shall* issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations)...." ROW Decision, Appendix IX.A.20 (emphasis added).

[9] For example, PG&E argues that "analysis [of the "preferred outcomes"] has not been briefed by the parties for the Commission's consideration" (Request at 3 and Attachment at 3), yet PG&E spent 9 pages of its post-hearing setting forth analysis on this exact topic. *See Post-Hearing Brief of Pacific Gas and Electric Company (U39E)* at 6-15. As another example, PG&E alleges that the "Revised License Agreement was only raised after Crown Castle's requested relief was denied in the Final Arbitrators' Report...." Request at 1. This is also factually untrue. As the Administrative Law Judge noted in the hearing: "Appeared that Crown was willing to utilize Pacific Gas and Electric's agreement, the overhead facilities license agreement, with some modifications." Hearing Tr. 19:17-20.