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 MOTION FOR STAY OF DECISION 19-03-004

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April 30, 2019

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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") Motion for Stay of Decision 19-03-004 ("Motion"), filed April 15, 2019. Crown Castle requests that the Commission deny PG&E's Motion because: (i) PG&E will not suffer harm if the D.19-03-004 ("Decision") is not stayed because, among other reasons, both incumbent local exchange carrier ("ILEC") tenants and joint owners on PG&E poles already operate under the new terms of the Revised License Agreement without any apparent harm to PG&E; (ii) PG&E likely will not, and should not, prevail on the merits for reasons discussed in Crown Castle's response to the PG&E application for rehearing; and (iii) the harm to Crown Castle caused by delay in rapid deployment of superior, reliable broadband service provided on a competitive playing field far outweighs the unsubstantiated harms alleged by PG&E.

[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 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.

The Commission's authority to grant a stay is discretionary.[2] As PG&E, notes when making the determination of whether to grant a stay the Commission will consider (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed against the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.[3] As demonstrated below, all factors weigh in favor of denying PG&E's Motion.

A. No Showing of Serious or Irreparable Harm

As an initial matter, a showing of "serious or irreparable" harm must be "actual and imminent," not merely "conjectural or hypothetical."[4] PG&E has shown neither imminent nor hypothetical harm caused by the Decision. PG&E waited over a month after approval of the Decision at issue to file this Motion, so any alleged harm cannot be imminent. Moreover, PG&E has not demonstrated hypothetical harm, let alone actual harm. Indeed, as Crown Castle has stated on the record, and in its response to the PG&E application for rehearing, all of the new terms set forth in the Revised License Agreement are terms currently enjoyed by utilities that jointly own poles with PG&E.[5]

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[2] *See*, e.g., *In re Neighbors for Smart Rail*, D.13-08-005, mimeo at 16 ("Pursuant to Pub. Util. Code § 1735, our authority to grant a stay is discretionary.").

[3] Motion at 2.

[4] *See*, e.g., *Summers v. Earth Island Inst.,* 555 U.S. 488, 493 (2009).

[5] *Post-Hearing Brief of Crown Castle NG West LLC (U-6745-C)* ("Crown Castle Post-Hearing Brief") at 26 ("PG&E's Licensing Agreement does not resolve the dispute for Crown Castle because the terms proposed do not contain the key ownership provisions for Crown Castle to deploy a superior reliable broadband network under nondiscriminatory access terms."); *Arbitrated License Agreement* at 1 ("The Licensing Agreement includes the minimum terms necessary for Crown Castle Fiber to rapidly deploy broadband, ensure superior reliable service, and compete on a level playing field with incumbent local

For example, PG&E alleges that because the Revised License Agreement allows Crown Castle to attach 45 days after submitting a pole attachment application, PG&E's ability to ensure all attachments meet engineering standards would be impacted. However, ILECs that jointly own poles with PG&E, Crown Castle's competitors, already operate under this 45-day "deemed approved" term,[6] and there has been no showing on the record of any harmful impacts to PG&E regarding this term. In fact, ILEC tenants currently operate under a right to the 45-day "deemed approved" provision in Decision 98-10-058 ("ROW Decision"),[7] and PG&E has not shown any harmful impact to the ILECs in ensuring attachments meet engineering standards.

Additionally, 45 days is the standard period for granting access requests under federal law and the numerous states that follow federal law. In fact, recent federal rule changes have shortened the pole attachment application approval process to 15 days where the pole owner relies upon the pre-construction survey submitted by the attaching entity.[8] Further, under federal rules attachers may exercise self-help where timeframes are not met,[9] which is the equivalent of the "deemed-approved" provisions of the ROW Decision.

B. PG&E Would Not Prevail on Merits of Rehearing Application

As stated in Crown Castle's response to the PG&E application for rehearing: (i) the Decision is supported by the record and consistent with ROW Decision; (ii) PG&E failed to meet its burden of proof throughout the course of the proceeding; (iii) the terms set forth in the Revised License Agreement are consistent with prior Commission decisions and orders; and (iv)

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exchange carrier ("ILECs") pole-owners that benefit from the additional provisions included in the attached Licensing Agreement.").

[6] *Id*.

[7] ROW Decision, 1998 Cal. PUC LEXIS 879, at *217, Appendix A, Section IV.B ("Failure of Pacific or GTEC to respond within 45 days shall be deemed an acceptance of the request for access.").

[8] *See* 47 CFR 1.1411(c)(iii).

[9] *See* 47 CFR 1.1411(i).

the Commission faithfully adhered to the expedited dispute resolution procedures set forth in the ROW Decision, and so provided due process to the parties involved. Accordingly, PG&E likely will not, and should not, prevail on the merits of its rehearing application.

C. Balance of harm

Crown Castle has emphasized throughout the course of the proceeding that PG&E's attempts to preclude Crown Castle from key attachment terms, including the 45-day "deemed approved" provision, harms Crown Castle's ability to deploy superior reliable broadband service to carrier customers on a competitive level playing field.[10] PG&E indicates that Crown Castle could use the license agreement—without the key attachment terms—of its former affiliate, Sunesys, LLC that was consolidated into Crown Castle.[11] However, as Crown Castle already stated on the record: "operating under this [Sunesys] agreement would significantly slow deployment, erect challenges to ensuring superior reliable service, and create an unlevel playing field such that the competitors of Crown Castle Fiber would benefit from enhanced attachment provisions."[12] Even if the Decision was later overturned, without the Revised License Agreement in place, Crown Castle would lose out on significant opportunities to rapidly deploy broadband in the interim and provide superior reliable service on a level playing field by operating under the Revised License Agreement.

The harm to Crown Castle of staying the Decision is clear based on the record. On the other hand, PG&E has made no showing of harm if the Decision is not stayed pending appeal. PG&E alleges that failure to stay the decision would somehow compromise safety if PG&E did

[10] Crown Castle Post-Hearing Brief at 21-23; *see also Application of Crown Castle NG West LLC (U-6745-C) for Arbitration of Pole Attachment Dispute with Pacific Gas and Electric Company* ("Arbitration Application") at 12-14.

[11] Motion at 3.

[12] *Arbitrated License Agreement* at 5

not have more than 45 days to review attachment applications.[13] As discussed above, the 45-day "deemed approved" provision is already enjoyed by other utilities attached to PG&E poles—and PG&E has made no showing that safety is compromised in those circumstances. Moreover, PG&E never once during the course of the proceeding alleged that Crown Castle's proposed terms would negatively impact safety.[14] In contrast, Crown Castle demonstrated that it safely attached to PG&E's poles to date, and was devoted to enhancing pole safety and fostering a safety culture—facts undisputed by PG&E during the proceeding.[15]

Additionally, PG&E alleges that the provision requiring a 60-day timeframe for pole replacement would impair PG&E's ability to serve its customers.[16] However, this cannot be true because ILECs that joint own poles with PG&E may initiate a pole replacement when necessary to ensure facilities are upgraded, without the need to wait indefinitely.[17] Moreover, the ability to facilitate pole replacement ensures safety and reliability, and is critical to swift and predictable broadband deployment.[18] Accordingly, PG&E would suffer no apparent harm if the decision is not stayed pending appeal, whereas the harm to Crown Castle of staying the decision is significant, as noted above.

[13] *See* Motion at 2-3.

[14] *See* Crown Castle Post-Hearing Brief at 19-20.

[15] *See id.* at 8; Arbitration Application at 12

[16] *See* Motion at 4.

[17] *See* Arbitration Application at 13; Crown Castle Post-Hearing Brief at 22; Arbitrated License Agreement at 4.

[18] *Id.*

II. CONCLUSION

For the reasons stated above, the Commission should deny the Motion. The Commission should take enforcement action, as PG&E's late attempts to stay the Decision are unreasonably delaying Crown Castle's deployment process.

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

/s/

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