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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 No. (A.) 18-10-004** (Filed: October 10, 2018)

PACIFIC GAS AND ELECTRIC COMPANY'S (U39E) RESPONSE TO APPLICATION FOR ARBITRATION

RX UY

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: 415-973-3239
Facsimile: (415) 973-5520
E-Mail: RX.Uy@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: October 25, 2018

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PACIFIC GAS AND ELECTRIC COMPANY'S (U39E) RESPONSE TO APPLICATION FOR ARBITRATION

Pursuant to Appendix A, Article IX of Decision (D.) 98-10-058 ("rights-of-way/ROW Decision"), Pacific Gas and Electric Company ("PG&E") submits this response to Crown Castle NG West LLC's ("Crown Castle" or "Crown") Application for Arbitration, filed October 10, 2018.

Crown Castle claims that PG&E has denied Crown's access to PG&E's poles in violation of the ROW Decision. However, PG&E has readily offered Crown Castle access to PG&E's poles through an Overhead Facilities License Agreement, which satisfies all of the mandatory, nondiscriminatory access requirements of the ROW Decision. In fact, PG&E has filed this Overhead Facilities License Agreement with the Commission, and the Commission has not reported any deficiencies.[1] [2] Consequently, Crown Castle cannot credibly claim that PG&E has violated the rules set forth in the ROW Decision. PG&E respectfully requests that the Commission reaffirm that PG&E's Overhead Facilities License Agreement satisfies all

[1] See Advice Letter ("AL") 2982-E, filed by PG&E on February 13, 2007, and the Commission's response letter dated March 8, 2007. PG&E provides a copy of AL 2982-E and the Commission's response letter on PG&E's website here: https://www.pge.com/nots/rates/tariffs/2007-e.shtml.

[2] PG&E filed AL 2982-E as an informational submittal. Pursuant to General Order 96-B, sections 3.9 and 6.2, the Commission does not approve informational submittals but may notify the utility of any omissions or defects in the submittal.

requirements of the ROW Decision, and that PG&E has fulfilled its ROW obligations by extending this License Agreement to Crown Castle.

Rejecting the Overhead Facilities License Agreement, Crown Castle demands that PG&E sell an ownership interest in PG&E's solely-owned poles under terms of sale dictated by Crown. However, nothing in the ROW Decision provides Crown Castle or any other attacher the right to force an electric utility to sell its pole space. Instead, the ROW Decision emphasizes that the nondiscriminatory access requirements pertain to tenancy licensing, not ownership. As such, the ROW Decision assures incumbent pole owners that their ownership interests will be protected, and no unlawful taking will occur. Thus, Crown Castle's demands for pole ownership directly contravene the Commission's assurances in the ROW Decision. Accordingly, PG&E urges the Commission to deny Crown Castle's requested relief and ensure that Crown cannot strip PG&E of its property rights.

I. INTRODUCTION

PG&E is an incumbent utility that owns nearly 2.4 million poles located within its service territory.[3] Of these 2.4 million poles, over 1.1 million are jointly-owned.[4] PG&E allows for telecommunication carriers and cable TV providers to attach to PG&E's structures through two means: (1) tenancy or (2) ownership.[5]

Option (1) – Tenancy: Through the tenancy option, PG&E leases one-foot increments of vertical space in the communications zone of the pole to qualified entities.[6] PG&E facilitates this transaction through an Overhead Facilities License Agreement with the prospective tenant, who is required to hold a Certificate of Public Necessity and Convenience ("CPNC") from the Commission that thereby authorizes the entity to access structures in governmental ROW for

[3] PG&E's Prepared Rebuttal Testimony, p. 1.

[4] PG&E's Prepared Rebuttal Testimony, p. 1.

[5] PG&E's Prepared Rebuttal Testimony, p. 3.

[6] PG&E's Prepared Rebuttal Testimony, p. 3.

communication conductor attachments.[7] PG&E's Overhead Facilities License Agreement, which PG&E filed with the Commission in AL 2982-E, satisfies all of the mandatory nondiscriminatory access provisions of the ROW Decision.[8]

Option (2) – Ownership: Through the ownership option, PG&E facilitates the *voluntary* sale and purchase of an ownership interest, which specifically includes the entire communications zone.[9] This owner-to-owner transaction occurs through the Northern California Joint Pole Association ("NCJPA").[10] Because PG&E requires purchase of the entire communications zone under this ownership option, PG&E requires the purchaser to assume the responsibilities for administering tenants in the communications zone.[11] As expressed below, this ownership option is separate from the ROW Decision, which pertains to mandatory tenancy access, not ownership.

In its Application for Arbitration, Crown Castle, a competitive local exchange carrier ("CLC"), acknowledges that PG&E has offered both options of attachment.[12] However, through unsubstantiated claims, Crown Castle argues that PG&E's tenancy option somehow violates the ROW Decision.[13] With regards to the ownership option, Crown Castle rejects PG&E's requirement that Crown assume the tenant management responsibilities of the communications zone, and Crown instead seeks discriminatory terms of sale that contradict PG&E's long-standing sales agreements with AT&T, PG&E's primary pole joint-owner.[14]

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[7] PG&E's Prepared Rebuttal Testimony, p. 3.

[8] PG&E's Prepared Rebuttal Testimony, p. 3.

[9] PG&E's Prepared Rebuttal Testimony, p. 3.

[10] PG&E's Prepared Rebuttal Testimony, p. 3.

[11] PG&E's Prepared Rebuttal Testimony, p. 3.

[12] Crown Castle's Prepared Testimony, p. 6.

[13] See Crown Castle's Prepared Testimony, p. 6.

[14] See Crown Castle's Prepared Testimony, p. 4.

Below, PG&E provides its responses to Crown Castle's allegations. PG&E notes that Crown Castle's Application for Arbitration draws heavily from the Prepared Testimony of Scott Scandalis, Crown's witness. To limit redundancy, PG&E's responses below will focus primarily on the legal arguments of Crown's Application for Arbitration. PG&E's Prepared Rebuttal Testimony, included as Attachment A of this response, will address any remaining factual issues contained in Mr. Scandalis's Prepared Testimony that Crown duplicates in its Application for Arbitration.

II. PG&E'S RESPONSES TO CROWN CASTLE'S ALLEGATIONS

A. The ROW Decision Pertains to Access Through Tenancy, not Ownership

In its Application for Arbitration, Crown Castle conflates the mandatory, nondiscriminatory tenancy access requirements of the ROW Decision with the voluntary ownership transactions of the NCJPA. Crown Castle seemingly alleges that the ROW Decision somehow grants Crown with the "right" to ownership.[15] However, the mandatory access requirements in the ROW Decision clearly pertain to access through tenancy, not ownership. For example, the ROW Decision states, "The access policy we establish does not eliminate the incumbents' ownership of their property nor does it give CLCs dominion over the incumbents' property."[16] In addition, the Commission recognized the pole owners' constitutional rights under the Fifth Amendment and emphasized that the ROW requirements did not constitute an "unlawful taking."[17] As expressed by the Commission: "Under the rules we establish, the incumbents still retain ultimate control over their property by virtue of their rights to require a

[15] See Mr. Scandalis's Prepared Testimony, p. 10: "Crown Castles' position is that it has a right to purchase the amount of space requested without the requirement to assume tenant management responsibility." See also the Application for Arbitration, p. 10: "[T]he ROW Decision does not limit the applicability of the ROW Rules to leasing arrangements, but rather envisions access as applying to both leasing and purchase."

[16] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *47.

[17] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *47.

signed contract expressly granting permission before third-party access may proceed."[18]

Furthermore, in comments submitted in the rulemaking proceeding of the ROW Decision, the California Rights-of Way Coalition ("the Coalition") and the California Cable Television Association ("CCTA"), who both advocated on behalf of the attachment community, proposed a broad definition for the term "right-of way", arguing that the term should encompass

> all the real property, physical facilities and legal rights for *use* of such property and facilities which provide for *access* on, over, along, under, through or across public and private property for placement and *use* of poles, pole attachments, anchors, ducts, innerducts, conduits, guy and support wires, remote terminals, vaults, telephone closets, telephone risers, and other support structures to reach customers for communications purposes.[19]

Even under that definition, which the Commission rejected for being "overly broad,"[20] the sole focus was on "use" and "access," not ownership.

Moreover, in framing the term "right-of-way," the Commission stated,

> [T]he intent of Congress . . . was to permit cable television operators and telecommunications providers to "piggyback" along distribution networks owned or controlled by utilities as opposed to granting access to every piece of equipment or real property owned or controlled by the utility . . . An overly broad interpretation of ROW would be unduly burdensome on the owners of facilities and is unnecessary to provide for the reasonable access needs of third parties.[21]

Once again, nothing in this language suggests that CLCs have a right to ownership of the solely-owned assets of incumbent utilities, and one would be hard-pressed in arguing that the term "piggyback[ing]" is somehow synonymous with ownership.

In addition, when discussing the pricing rates for attachments, the ROW Decision defines

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[18] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *47.

[19] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *9 (emphasis added).

[20] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *10.

[21] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *10.

pricing as including "an *annual* recurring fee for the cost of providing the ongoing attachment to poles, supporting anchors, or other support structures of the utility."[22] The Commission repeats this concept later in the ROW Decision: "An *annual* recurring fee computed as follows . . ."[23] These quotes highlight that the Commission's discussion pertained to annual rental rates between a utility pole owner and a tenant attacher, not one-time sales prices for owner-to-purchaser transactions. Ultimately, any reasonable interpretation of the ROW Decision would lead to the conclusion that the Decision pertains to tenancy, not ownership.

In spite of the foregoing, Crown Castle claims that "the ROW Decision does not limit the applicability of the ROW Rules to leasing arrangements, but rather envisions access as applying to both leasing and purchase."[24] In support of this claim, Crown cites two quotes from the ROW Decision:

> (1) In a competitive market setting, the relative bargaining between a *willing buyer and willing seller* produces a market clearing price which is acceptable to both sides. We must therefore consider whether the relative bargaining power of the incumbent utilities is balanced in relation to CLCs.[25]
>
> (2) [A] CLC or an electric utility may not arbitrarily deny an ILEC's request for access to its facilities.[26]

Because the second quote mentions nothing about ownership, PG&E will direct its focus on the first quote.

In that quote, the Commission references a "willing buyer and willing seller" to simply provide an example of basic economic principles, not to suggest that the ROW Decision

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[22] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *24 (emphasis added).

[23] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *79 (emphasis added).

[24] Application for Arbitration, p. 10.

[25] Application for Arbitration, p. 10, citing ROW Decision, 1998 Cal. PUC LEXIS at *80 (emphasis added by Crown Castle).

[26] Application for Arbitration, p. 10, citing ROW Decision, 1998 Cal. PUC LEXIS at *66-*67.

somehow grants CLCs with a mandatory right to ownership. Crown Castle cherry-picks this "willing buyer and willing seller" quote from section IV of the ROW Decision, titled "Pricing Issues." In that section, the Commission sets the proposed annual *licensing* rates for attachments and does not opine whatsoever on the appropriate costs for *purchasing* ownership interest in a pole. In fact, this same section of the ROW Decision contains the pricing quote provided by PG&E above regarding "an *annual* recurring fee for the cost of providing the ongoing attachment to poles, supporting anchors, or other support structures of the utility,"[27] which clearly refers to an ongoing landlord/tenant arrangement, not a one-time sale of ownership interest. Crown Castle's attempt to take an economic-based phrase out of context fails to suggest that the ROW Decision bestows unto Crown the right to dictate the terms of sale of PG&E's solely-owned assets. Crown's proposed outcome of forcing PG&E to surrender its ownership rights far exceeds the Coalition and CCTA's "overly broad" right-of-way definition, which the Commission expressly rejected.

B. The Commission Never Indicated Any Deficiencies in PG&E's Overhead Facilities License Agreement, so PG&E has Satisfied its ROW Access Obligations by Offering this License Agreement to Crown Castle

In a circular argument, Crown Castle states that PG&E's tenancy option "violates of [sic] the ROW Rules because to the extent PG&E offers pole access through the purchase of space, such access cannot run afoul of the ROW Rules."[28] Thus, rather than highlighting the reasons in which PG&E's tenancy option allegedly violates the ROW Decision, Crown Castle instead shifts the focus back to the purchase option. Consequently, Crown Castle has not presented any cogent

[27] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *24 (emphasis added).

[28] See Application for Arbitration, p. 11.

argument suggesting that PG&E's tenancy offer fails to satisfy the ROW access requirements. In fact, Crown Castle cannot credibly make such an argument, considering that the Commission, when given the opportunity, did not report any defects in PG&E's standard Overhead Facilities License Agreement.

In AL 2982-E, filed on February 13, 2007, PG&E submitted its standard Overhead Facilities License Agreement to the Commission. In that filing, PG&E explained,

> In accordance with D.98-10-058 [the ROW Decision], PG&E negotiated a standard agreement with the California Cable Television Association (CCTA), which represents cable companies in PG&E's service territory and which was authorized by those cable companies to negotiate standardized terms for pole attachment access with PG&E. Together, PG&E and the CCTA created the attached Overhead Facilities License Agreement that strikes an acceptable balance between operational and other concerns of the utility and the needs of the cable/telecommunications companies for efficient access to PG&E's support structures. PG&E makes this negotiated standard contract available to any third party that qualifies for access under the mandatory attachment rules of D.98-10-058, regardless of whether they are members of the CCTA.[29]

As shown in the quote above, PG&E's Overhead Facilities License Agreement is derived from the requirements of the ROW Decision. By response letter dated March 8, 2007, the Commission did not report any omissions or defects in this Overhead Facilities License Agreement.[30] Consequently, PG&E has satisfied its ROW access obligations by offering this License Agreement to Crown Castle.

[29] AL 2982-E, pp. 1-2.

[30] PG&E filed AL 2982-E as an informational submittal. Pursuant to General Order 96-B, sections 3.9 and 6.2, the Commission does not approve informational submittals but may notify the utility of any omission or defect in the submittal.

C. PG&E's Tenancy Option Satisfies the ROW Requirements Despite Crown Castle's Preference for Ownership Rights

Crown Castle lists several alleged disadvantages of the tenancy option. Crown claims that if it attaches to PG&E's poles as a tenant rather than a joint owner, Crown would (1) need to provide PG&E with 48 hours advance notice prior to performing work on the poles; (2) be excluded from a 45-day "deemed-approve" provision; (3) have less insight and authority over other attachers on the pole; (4) lack the ability to initiate a pole replacement; and (5) be subject to rearrangement by the pole owner.[31] However, PG&E reemphasizes that its Overhead Facilities License Agreement fully complies with the nondiscriminatory access requirements of the ROW Decision. Thus, the fact that PG&E has readily offered this License Agreement to Crown Castle should definitively indicate to the Commission that PG&E has already fulfilled its obligations pertaining to nondiscriminatory access, notwithstanding Crown Castle's additional preferences above.

1. PG&E's 48-Hour Advance Notice Requirement is Entirely Consistent with the 48-Hour Notice Requirement in the ROW Decision

As Crown Castle correctly indicates, section 4.2 of PG&E's Overhead Facilities License Agreement states, "Permittee shall provide the Company forty-eight (48) hours advance notice by calling the Company's designated representative before any work is performed on the Company Overhead Facilities when an electric service shutdown is not required." This 48-hour advance notice requirement is entirely consistent with the ROW Decision, which states, "To use its own personnel or contractors on electric utility poles, the telecommunications carrier or cable TV company must give 48 hours advance notice to the electric utility, unless an electrical

[31] Application for Arbitration, pp. 13-14.

shutdown is required."[32] Thus, PG&E's 48-hour time provision does not violate any of the access requirements of the ROW Decision.

2. The Absence of a 45-day "Deemed-Approved" Provision in PG&E's Overhead Facilities License Agreement Complies with the ROW Decision

The ROW Decision requires the incumbent ILECs, Pacific Bell ("Pacific") and GTE California Incorporated ("GTEC"), to "respond to the telecommunications carrier within 45 days after receipt of the written request [for attachment]."[33] However, the ROW Decision specifically excludes PG&E and the other electric utilities from any such 45-day requirement: "[W]e shall prescribe standard response times only for the two large ILECs, Pacific[34] and GTEC."[35] The Commission provides a well-reasoned rationale for this determination: "We agree that the electric utilities should not compromise their primary obligations to serve their own customers in the process of complying with telecommunications carriers' requests for information or for ROW access."[36]

Thus, PG&E's Overhead Facilities License Agreement is not required to have a 45-day "deemed-approved" provision, despite any such provisions in the NCJPA.[37]

[32] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *77.

[33] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *35.

[34] As noted above, "Pacific" refers to Pacific Bell, not PG&E.

[35] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *34.

[36] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *35.

[37] See Application for Arbitration, p. 8: "[T]he JPA process has a deemed-approved option after 45 days."

3. The ROW Decision does not Require PG&E to Satisfy Crown Castle's Three Remaining Preferences Above

Likewise, with regards to items (3), (4), and (5) above, nothing in the ROW Decision requires PG&E's Overhead Facilities License Agreement to address these items in favor of a tenant attacher. Instead, authority over attachers on a pole, the ability to initiate a pole replacement, and the authority to rearrange tenants are privileges reserved to the incumbent utility.[38] Although Crown Castle contends that it would enjoy the above privileges if it were a pole owner, the fact of the matter is that under the ROW Decision, PG&E has no obligation to sell an interest in its solely-owned poles based on Crown's terms of sale. PG&E has provided Crown nondiscriminatory access in the form of PG&E's Overhead Facilities License Agreement, and this Agreement fully complies with all of the ROW requirements.

D. If Crown Castle Still Seeks Ownership in Spite of PG&E's Offer of Nondiscriminatory Access through Tenancy, then PG&E Respectfully Requests that the Commission Amend the ROW Decision to Require Crown to Provide Nondiscriminatory Access to its Tenants

PG&E has offered Crown Castle the same terms of sale that PG&E has offered to AT&T for years: PG&E requires the purchase of the entire six-feet of the communications zone, which includes the landlord duties relating to all past, current, and future tenants in that communications zone.[39] As noted by Crown Castle,

[38] See ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *39: "We generally agree that the incumbent utility, particularly electric utilities, should be permitted to impose restrictions and conditions which are necessary to ensure the safety and engineering reliability of its facilities. In the interest of public health and safety, the utility must be able to exercise necessary control over access to its facilities to avoid creating conditions which could risk accident or injury to workers or the public. The utility must also be permitted to impose necessary restrictions to protect the engineering reliability and integrity of its facilities."

[39] See PG&E's Prepared Rebuttal Testimony, pp. 3-4.

> [m]ost of the poles on which Crown Castle seeks to purchase space in NCJPA territory are jointly-owned by PG&E and Pacific Bell Telephone Company ('AT&T'). In these cases, AT&T typically owns and manages the entire communications zone and Crown Castle acquires its space on the pole from AT&T.[40]

The reason why AT&T "owns and manages the entire communications zone" for these jointly-owned poles is because PG&E sold the entire communications zone to AT&T, and as part of the terms of sale, PG&E required AT&T to manage all past, current, and future tenants.[41] Thus, PG&E's terms of sale to Crown Castle are identical to the terms of sale that PG&E has been offering to AT&T for many years, as implied by Crown Castle's own Application for Arbitration.[42] Consequently, these terms of sale are not discriminatory.

However, after reviewing Crown Castle's Application for Arbitration and re-analyzing the ROW Decision, PG&E agrees with Crown that the ROW Decision "[does] not require CLCs to provide access to cable companies."[43] As a result, the ROW Decision, which aimed to provide nondiscriminatory access to CLCs and cable companies alike, ironically seems to provide CLC pole owners with the option to discriminate against cable companies. PG&E respectfully urges the Commission to revise its ROW Rules to require CLC pole owners to provide the same nondiscriminatory access to cable companies and all other qualified entities, consistent with the requirements that the Commission has already imposed on electric utilities and ILECs. Such a step would advance the Commission's goals of fostering nondiscriminatory access.

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[40] Crown Castle's Prepared Testimony, p. 4.

[41] See PG&E's Prepared Rebuttal Testimony, p. 8.

[42] See Crown Castle's Prepared Testimony, p. 4.

[43] See Application for Arbitration, p. 8, citing to the ROW Decision, 1998 Cal. PUC LEXIS at *38.

PG&E understands that this request is likely outside the scope of this arbitration proceeding. However, PG&E notes that the Commission currently has an active rulemaking proceeding (R.17-06-028) pertaining to the ROW rules. In fact, the scope of that rulemaking proceeding includes "proposed Right of Way rule amendments,"[44] which would thereby provide an ideal avenue for the Commission to address PG&E's request.

As elaborated in PG&E's Prepared Rebuttal Testimony accompanying this filing, PG&E pondered the dilemma posed by the ROW Decision's language that allows for CLCs to discriminate against cable companies.[45] PG&E ultimately decided that it can no longer offer Crown Castle any terms of sale unless and until the Commission requires all CLCs to provide the same nondiscriminatory access rights required of electric utilities and ILECs.[46] Thus, PG&E respectfully requests that the Commission revise the ROW Rules to address the discriminatory, paradoxical CLC carve-out provided in the ROW Decision.

PG&E anticipates that Crown Castle will strongly object to this policy. However, Crown itself acknowledges that the Commission has not required CLCs to provide nondiscriminatory access to cable companies;[47] furthermore, Crown acknowledges that PG&E has required AT&T to serve as the landlord of PG&E's jointly-owned poles in which AT&T owns the entire communications zone.[48] Therefore, PG&E's hands are tied in this dilemma: either (1) require Crown Castle to become the landlord of the entire communications zone, which would allow Crown to discriminate against cable company tenants; (2) allow Crown to purchase in one-foot

[44] See Assigned Commissioner's August 8, 2018 Scoping Memo and Ruling for R.17-06-028, p. 11.

[45] PG&E's Prepared Rebuttal Testimony, p. 8.

[46] PG&E's Prepared Rebuttal Testimony, p. 8.

[47] See Application for Arbitration, p. 8, citing to the ROW Decision, 1998 Cal. PUC LEXIS at *38.

[48] Crown Castle's Prepared Testimony, p. 4.

increments contrary to PG&E's long-standing agreements with AT&T; or (3) allow Crown to access PG&E's support structures as a tenant, pursuant to the ROW Decision, while not selling to Crown in the interim until the Commission requires Crown to provide nondiscriminatory access to cable companies and all other qualified entities.[49] For the reasons described below, PG&E finds that option (3) provides the most prudent and fair outcome.

Option (1): This option would be consistent with PG&E's long-standing terms of sale with AT&T.[50] Thus, because PG&E would be offering the same terms of sale for both ILECs and CLCs, this option would be nondiscriminatory with regards to these entities. However, as indicated by Crown Castle's Application for Arbitration, Crown retains the right to discriminate against cable companies, since the Commission provided a carve-out exception for CLC pole owners in the ROW Decision.[51] Therefore, if Crown becomes a landlord owner under this option, Crown would have the freedom to discriminate against cable companies. As a result, this option does not seem feasible unless the Commission reverses the CLC carve-out exception in the ROW Decision.

Option (2): This option runs counter to PG&E's long-standing terms of sale with AT&T. Thus, this option perpetuates discriminatory treatment, since PG&E would be offering AT&T and Crown Castle with entirely different terms of sale.

It is PG&E's understanding that Crown Castle desires this sweetheart deal of buying one-foot of pole space.[52] However, PG&E's current policy of requiring all prospective purchasers to

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[49] PG&E's Prepared Rebuttal Testimony, p. 9.

[50] PG&E's Prepared Rebuttal Testimony, p. 9.

[51] See Application for Arbitration, p. 8, citing to the ROW Decision, 1998 Cal. PUC LEXIS at *38.

[52] See e.g. Application for Arbitration, p. 1: "To facilitate this policy, PG&E is requiring that Crown Castle purchase all of the space in the communications zone"; Application for Arbitration, p. 21: "And

buy the entirety of the communications zone and assume all responsibilities and administration obligations related to tenants is deeply-rooted.[53] Roughly half of PG&E's 2.4 million poles are jointly-owned, having been sold and administered according to these terms.[54] Recorded instances of sales of interest that differ from these terms are few, and they ultimately constitute oversights, which do not set a precedent.[55] PG&E finds it unreasonable for Crown Castle to expect that PG&E should change such established business practices applying to over one million jointly-owned poles in order to accommodate Crown's desired manner of ownership for what amounts to such a small fraction of the total number of jointly-owned poles.[56]

Finally, this sweetheart deal of purchasing one-foot of pole space would have serious discriminatory implications, considering that PG&E, for years, has offered terms of sale to AT&T that require the purchase of the entire communications zone and the assumption of landlord responsibilities for that zone.

As described above, PG&E finds nothing in the ROW Rules that prohibit a utility from exercising its ownership rights in setting terms of sale. For example, PG&E is aware that San Diego Gas & Electric (SDG&E) does not allow joint-ownership of the pole structures it owns, rather choosing to only allow access and attachment by license agreement.[57] PG&E finds that it is reasonable for pole-owning electric utilities to set terms of sale for their poles, provided that

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relatedly, the Commission may consider whether PG&E can require that Crown Castle purchase all of the space in the communications zone, to facilitate this policy."

[53] PG&E's Prepared Rebuttal Testimony, p. 10.

[54] PG&E's Prepared Rebuttal Testimony, p. 10.

[55] PG&E's Prepared Rebuttal Testimony, p. 10.

[56] See PG&E's Prepared Rebuttal Testimony, pp. 2-3.

[57] PG&E's Prepared Rebuttal Testimony, p. 11.

the utilities continue to ensure nondiscriminatory access through tenancy license agreements, consistent with the ROW Decision.

Option (3): As noted in detail above, PG&E's Overhead Facilities License Agreement satisfies all of the ROW access requirements. Thus, this remains a viable nondiscriminatory option. If Crown Castle still seeks ownership in spite of the nondiscriminatory access that PG&E readily provides through its Overhead Facilities License Agreement, then PG&E urges the Commission to revise its ROW Rules to require Crown Castle to provide nondiscriminatory access to the pole space that it owns. Once the Commission does so, PG&E will resume offering its standard terms of sale to Crown Castle: purchase the entire communications zone, and assume all landlord responsibilities for that zone.

III. EXPEDITED DISPUTE RESOLUTION PROCEDURES

A. Burden of Proof

The ROW Decision states,

> In resolving disputes over ROW access, we shall consider how closely each party has conformed with our adopted "preferred outcomes" and whether proposed terms are unfairly discriminatory or anticompetitive. The burden of proof shall be on the party advocating a departure from our adopted standards in prevailing in a disputed agreement.[58]

As described above, the ROW Decision mandates nondiscriminatory access through tenancy, not ownership. PG&E provides this mandatory nondiscriminatory tenancy access through its Overhead Facilities License Agreement. Because the Commission has not indicated any deficiencies in PG&E's License Agreement, Crown Castle is the party seeking "a departure from [the Commission's] adopted standards." Therefore, the burden of proof falls to Crown.

[58] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *8.

In suggesting that PG&E carries the burden of proof, Crown Castle further misconstrues the ROW Decision. Drawing language from a subsection regarding safety and reliability, Crown Castle quotes D.98-10-058: "In the event of such dispute, the burden of proof shall be on the incumbent utility to justify that its proposed restrictions or denials are necessary to address valid safety or reliability concerns and are not unduly discriminatory or anticompetitive."[59] However, this quote pertains specifically to disputes regarding denial of access due to safety or reliability concerns.[60] In contrast, Crown and PG&E's dispute is not confined to safety and reliability; instead, the dispute primarily revolves around whether PG&E's Overhead Facilities License Agreement satisfies the ROW Decision. Thus, Crown Castle's quote is inapplicable to this dispute, and Crown retains the burden of proof.

B. Statement of All Unresolved Issues

Crown notes only one unresolved issue: "Is PG&E entitled to condition Crown Castle's purchase of space on PG&E-owned poles on Crown Castle's agreement that it assume tenant management responsibility for current and future tenants in the communications zone (i.e. PG&E tenants)?"[61]

PG&E agrees that under the ROW Decision, as it currently stands, Crown Castle cannot assume tenant management responsibility, since Crown can discriminate against cable

[59] Application for Arbitration, p. 10, citing to ROW Decision, 1998 Cal. PUC LEXIS at *121.

[60] In the ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *41, the two sentences directly preceding this quote state, "We expect parties to resolve most issues relating to safety and reliability restrictions not explicitly covered in our rules through mutual negotiation among themselves. In the event that parties cannot resolve disputes among themselves over whether a particular restriction or denial of access is necessary in order to protect public safety or ensure the engineering reliability of the system, any party to the negotiation may request Commission intervention under the dispute resolution procedures we adopt below."

[61] Application for Arbitration, p. 16.

companies.[62] Thus, as previously noted, PG&E urges the Commission to revise the ROW Decision to require Crown to provide nondiscriminatory access to cable companies and other qualified entities for the poles that Crown owns.

Although overlooked by Crown, the core issue in this proceeding is: Does PG&E's Overhead Facilities License Agreement, which PG&E has offered to Crown Castle, satisfy the ROW Decision's nondiscriminatory access requirements? If the answer is in the affirmative, then PG&E respectfully requests that the Commission find in favor of PG&E and close this proceeding.

C. Description of Parties' Positions on Unresolved Issues

PG&E's Position: Given that PG&E filed its Overhead Facilities License Agreement with the Commission, and the Commission raised no objections to the contents of the License Agreement, PG&E firmly believes that it has satisfied the ROW Decision's nondiscriminatory access requirements by offering the License Agreement to Crown.

Crown Castle's Position: Crown Castle suggests that PG&E's Overhead Facilities License Agreement violates the ROW Decision, considering Crown states that PG&E's "attach as a tenant" option "violate[s] the ROW Rules and den[ies] Crown Castle access to poles on terms and conditions to which it is entitled."[63] But as described above, Crown Castle has failed to articulate how PG&E's Overhead Facilities License Agreement violates the ROW Decision.

D. Proposed Agreement

[62] See Application for Arbitration, p. 8, citing to the ROW Decision, 1998 Cal. PUC LEXIS at *38.

[63] Crown Castle's Prepared Testimony, p. 6.

PG&E rejects Crown Castle's proposed agreement in its entirety because it pertains to ownership,[64] whereas the ROW Decision's mandatory access requirements pertain to tenancy. PG&E's Overhead Facilities License Agreement constitutes PG&E's proposed agreement.

E. Direct Testimony

PG&E agrees with Crown Castle that the ROW Decision appears to allow for the filing of prepared testimony in this proceeding.[65] Accordingly, PG&E includes its Prepared Rebuttal Testimony as Attachment A of this filing.

IV. SCOPING INFORMATION

Proposed Category: PG&E disagrees with Crown Castle's classification of this proceeding as ratesetting.[66] PG&E believes that this dispute qualifies as an adjudicatory proceeding, considering that it mirrors many of the aspects of a formal complaint proceeding.

Need for Hearing: Article A, Section IX of the ROW Decision provides for an arbitration conference and hearing.[67] Based on the language of the ROW Decision, it is unclear to PG&E whether that hearing would be an evidentiary hearing.

Proposed Schedule: PG&E agrees that Crown Castle's proposed schedule[68] complies with the schedule set forth in the ROW Decision. However, PG&E respectfully requests that the Commission schedule the arbitration conference and hearing, at the earliest, on November 6,

[64] See Application for Arbitration, p. 17.

[65] See Application for Arbitration, p. 18.

[66] See Application for Arbitration, p. 20.

[67] ROW Decision, 1998 WL 1109255 (Cal.P.U.C.) at *83.

[68] See Application for Arbitration, p. 21.

2018, as key PG&E personnel will not be available until that date.

V. CONCLUSION

Fundamentally, Crown Castle is demanding that PG&E cede ownership of its solely-owned assets. Such an outcome is wholly unsupported by the ROW Decision, which deals with tenancy access, not ownership. PG&E respectfully requests that the Commission determine that PG&E's Overhead Facilities License Agreement satisfies the mandatory access requirements of the ROW Decision, and that PG&E fulfilled its ROW obligations by offering this License Agreement to Crown Castle.

Respectfully Submitted,

RX UY

By: */s/ RX Uy*
RX UY

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: 415-973-3239
Facsimile: (415) 973-5520
E-Mail: RX.Uy@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: October 25, 2018

Attachment A

Application: 18-10-004
Date: October 25, 2018
Witness: Tinamarie De Teresa

APPLICATION OF CROWN CASTLE NG WEST LLC FOR ARBITRATION OF POLE ATTACHMENT DISPUTE WITH PACIFIC GAS AND ELECTRIC COMPANY

PACIFIC GAS AND ELECTRIC COMPANY'S REBUTTAL TESTIMONY

PACIFIC GAS AND ELECTRIC COMPANY'S

REBUTTAL TESTIMONY

PACIFIC GAS AND ELECTRIC COMPANY
REBUTTAL TESTIMONY

A. Introduction

Q 1 Please state your name and the purpose of this rebuttal testimony.

A 1 My name is Tinamarie De Teresa. I am the current Manager of PG&E's Joint Pole/Joint Utilities group. I have 14 years of experience at PG&E, which included a previous role as Joint Pole Supervisor. I have an undergraduate degree in business management.

This testimony responds to all or portions of the direct testimony of Scott Scandalis, who provided his testimony on behalf of Crown Castle.

B. Background Information on PG&E

Q 2 Do you have relevant background information on PG&E that you would like to share?

A 2 Yes, I do.

PG&E is an incumbent utility that owns nearly 2.4 million poles located within its service territory. Of these 2.4 million poles, over 1.1 million are jointly-owned. PG&E facilitates sales of pole ownership through the current Northern California Joint Pole Association (NCJPA). PG&E has been a member of the NCJPA or its preceding joint pole associations for over 100 years.

As described below, PG&E satisfies the nondiscriminatory access requirements of the ROW Decision through PG&E's Overhead Facilities License Agreement, which allows for third parties to attach to PG&E's solely-owned poles as tenants.

C. PG&E's Response to Crown Castle's Positions

Q 3 What does Crown say about its experiences at the NCJPA?

A 3 Crown states that "The purpose of the NCJPA is for members to share expenses regarding the ownership, maintenance, use, setting, replacement, dismantling, abandonment or removal of jointly owned poles, and to ensure efficiency of administration of the ownership and occupancy of jointly owned poles. Pursuant to the NCJPA process Crown Castle purchases pole space through the submission of joint pole authorization ("JPA") to current NCJPA pole owners. Essentially, Crown Castle submits a proposal to purchase a specific portion of space on the pole. Upon the submission of the JPA, pole owners may reply and modify the JPA, or not reply and after 45 days the JPA is effectively approved and Crown Castle may install its facilities. Through this process, Crown Castle has acquired space on approximately 20,000 poles in Northern California and approximately 140,000 poles in Southern California."[1]

Q 4 What is PG&E's response?

A 4 PG&E agrees with Crown Castle's description of the NCJPA and its processes. However, according to the August 2018 NCJPA Operations Financing Worksheet, Crown Castle and its affiliated companies, Next G Networks and New Path Networks, jointly own no more than 7,700 poles in the jurisdictional territories of the NCJPA and PG&E. Thus, it is unclear to PG&E how Crown can claim that "[t]hrough [the NCJPA] process, Crown

[1] Crown Castle's Prepared Testimony, pp. 3-4.

Castle has acquired space on approximately 20,000 poles in Northern California."

PG&E estimates that Crown Castle has sought to utilize NCJPA processes to purchase the first joint-ownership interest in less than 1,000 of PG&E's poles.

Q 5 What are the ways in which PG&E allows telecommunications companies, such as Crown Castle, to attach to PG&E's support structures?

A 5 PG&E allows for telecommunications carriers and cable TV providers to attach to its structures through two means: (1) tenancy or (2) ownership.

Option (1) – Tenancy: Through the tenancy option, PG&E leases one-foot increments of vertical space in the communications zone of the pole to qualified entities. PG&E facilitates this transaction through an Overhead Facilities License Agreement with the prospective tenant, who is required to hold a Certificate of Public Necessity and Convenience (CPNC) from the CPUC that thereby authorizes the entity to access structures in governmental rights-of-way (ROW) for communication conductor attachments. PG&E's Overhead Facilities License Agreement satisfies all of the mandatory nondiscriminatory access provisions of the Commission's 1998 ROW Decision (D.98-10-058).

Option (2) – Ownership: Through the ownership option, PG&E facilitates the **voluntary** sale and purchase of an ownership interest, which specifically includes the entire communications zone. This owner-to-owner transaction occurs through the NCJPA process described above. As elaborated in the legal pleading accompanying this filing, this ownership

option is separate from the ROW Decision, which pertains to mandatory tenancy access, not ownership.

Because PG&E requires purchase of the entire communications zone under option (2), PG&E requires the purchaser to assume the responsibilities for administering tenants in the communications zone.

Q 6 Does Crown Castle acknowledge that PG&E has offered both avenues of attachment to Crown?

A 6 Yes, Crown Castle acknowledges that PG&E has offered both avenues of attachment.[2]

Q 7 What does Crown Castle say about PG&E's offer to allow Crown to attach as a tenant?

A 7 Crown Castle claims that PG&E's "attach as a tenant" option "violate[s] the ROW Rules and den[ies] Crown Castle access to poles on terms and conditions to which it is entitled."[3]

Q 8 How does PG&E's respond?

A 8 PG&E strongly disagrees. Through the permissions and rights incorporated in PG&E's Overhead Facilities License Agreement, PG&E has offered Crown Castle the same opportunity of accessing and attaching to PG&E's solely-owned pole assets that PG&E offers to other qualified telecommunications carriers, pursuant to the nondiscriminatory access requirements of the ROW Decision. The ROW Rules specifically speak of attaching to IOU-owned poles in the public rights-of-way via licensing with the pole owner. This is commonly referred to as tenancy. Thus, PG&E's offer of access to its poles

[2] Crown Castle's Prepared Testimony, p. 6.

[3] Crown Castle's Prepared Testimony, p. 6.

through a tenancy license agreement is wholly aligned and consistent with the ROW Rules. PG&E has filed its Overhead Facilities License Agreement with the Commission, and the Commission has not reported any deficiencies.[4]

Crown Castle has failed to offer any evidence to support its broad, generalized claim that PG&E's "attach as a tenant" option violates the ROW Rules. PG&E believes that it would not be possible for Crown to make such an argument, considering that PG&E fulfills the nondiscriminatory access requirements of the ROW Decision by offering this same Overhead Facilities License Agreement to all qualified telecommunications carriers and cable companies who have a CPNC. In fact, since the issuance of the ROW Decision, PG&E has executed roughly 100 License Agreements with qualified entities to permit their access to PG&E's support structures. Furthermore, PG&E is currently processing several new License Agreement inquiries using the same Overhead Facilities License Agreement that PG&E has offered to Crown Castle.

Q 9 What does Crown Castle list as the downsides of a tenancy arrangement?

A 9 Crown claims that if it attaches to PG&E's poles as a tenant, Crown would (1) need to provide PG&E with 48 hours advance notice prior to performing work on the poles; (2) be excluded from a 45-day "deemed-approve" provision; (3) have less insight and authority over other attachers on the pole; (4) lack the ability to initiate a pole replacement; and (5) be subject to rearrangement by the pole owner.[5]

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[4] See PG&E's Advice Letter (AL) 2982-E.

[5] Crown Castle's Prepared Testimony, pp. 7-8.

Q 10 How does PG&E respond?

A 10 PG&E reemphasizes that its Overhead Facilities License Agreement fully complies with the nondiscriminatory access requirements of the ROW Decision. Thus, the fact that PG&E has readily offered this License Agreement to Crown Castle should definitively indicate to the Commission that PG&E has already fulfilled its obligations pertaining to nondiscriminatory access.

With regards to item (1) above, PG&E agrees that its Overhead Facilities License Agreement would generally require Crown Castle to provide PG&E with 48-hour advance notice prior to performing work. However, this 48-hour requirement is completely aligned with the ROW Decision, which imposes this same 48-hour notice requirement on telecommunications carriers and cable TV companies.[6] Thus, PG&E's 48-hour time provision does not violate the nondiscriminatory access requirements of the ROW Decision.

With regards to item (2), the ROW Decision specifically indicates that PG&E and the other electric utilities do not have a 45-day "deemed-approved" timeline.[7] Once again, the fact that PG&E's Overhead Facilities License Agreement does not contain a 45-day "deemed-approved" provision is entirely consistent with the ROW Decision.

Likewise, with regards to items (3), (4), and (5) above, nothing in the ROW Decision requires PG&E's Overhead Facilities License Agreement to address these items in favor of a tenant attacher. As these issues are legal in

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[6] See the legal pleading included in this filing, p. 9.

[7] See the legal pleading included in this filing, p. 10.

nature and pertain to the interpretation of the ROW Decision, PG&E's legal pleading accompanying this filing further addresses these items.

In sum, Crown Castle fails to indicate how PG&E's Overhead Facilities License Agreement violates the ROW Rules.

Q 11 What does Crown say about PG&E's requirement that a purchaser buy the entire communications zone and assume the tenant management responsibilities for that zone?

A 11 Crown Castle believes that PG&E cannot require a CLC joint owner to become the landlord of the communications zone.[8]

Q 12 How does PG&E respond?

A 12 After reviewing Crown Castle's Application for Arbitration and re-analyzing the ROW Decision, PG&E agrees with Crown Castle that the ROW Decision does not require CLCs to provide access to cable companies.[9] As a result, the ROW Decision, which aimed to provide nondiscriminatory access to CLCs and cable companies alike, ironically seems to provide CLC pole owners with the option to discriminate against cable companies. As described more fully in PG&E's legal pleading included in this filing, PG&E urges the Commission to revise its ROW Rules to require CLC pole owners to provide the same nondiscriminatory access to cable companies and all other qualified entities, consistent with the requirements that the Commission has already imposed on electric utilities and ILECs.

With that said, PG&E offered Crown Castle the same terms of sale that PG&E has offered to AT&T for years: PG&E requires the purchase of the

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[8] Crown Castle's Prepared Testimony, p. 4.

[9] See Crown's Application for Arbitration, p. 8.

entire six-feet of the communications zone, which includes the landlord duties relating to all past, current, and future tenants in that communications zone. As noted by Crown Castle, "[m]ost of the poles on which Crown Castle seeks to purchase space in NCJPA territory are jointly-owned by PG&E and Pacific Bell Telephone Company ('AT&T'). In these cases, AT&T typically owns and manages the entire communications zone and Crown Castle acquires its space on the pole from AT&T."[10] The reason why AT&T "owns and manages the entire communications zone" for these jointly-owned poles is because PG&E sold the entire communications zone to AT&T and required AT&T to manage all past, current, and future tenants. Thus, PG&E's terms of sale to Crown Castle are identical to the terms of sale that PG&E has been offering to AT&T for many years, as implied by Crown Castle's own Prepared Testimony.[11] Consequently, these terms of sale are not discriminatory.

As acknowledged above, however, Crown Castle, as a pole owner, can discriminate against cable companies due to an exception carved out in the ROW Decision. After deep consideration of this conundrum, PG&E has concluded that it can no longer offer Crown Castle with any terms of sale unless and until the Commission requires all CLCs to provide the same nondiscriminatory access rights required of electric utilities and ILECs. Thus, PG&E respectfully requests that the Commission revise the ROW Rules to address the discriminatory, paradoxical CLC carve-out provided in the ROW Decision.

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[10] Crown Castle's Prepared Testimony, p. 4.

[11] Crown Castle's Prepared Testimony, p. 4.

PG&E anticipates that Crown Castle will strongly object to this policy. However, Crown itself acknowledges that the Commission has not required CLCs to provide nondiscriminatory access to cable companies; furthermore, Crown acknowledges that PG&E has required AT&T to serve as the landlord of PG&E's jointly-owned poles in which AT&T owns the entire communications zone.[12] Therefore, PG&E's hands are tied in this dilemma: either (1) require Crown Castle to become the landlord of the entire communications zone, which would allow Crown to discriminate against cable company tenants; (2) allow Crown to purchase in one-foot increments contrary to PG&E's long-standing agreements with AT&T; or (3) allow Crown to access PG&E's support structures as a tenant, pursuant to the ROW Decision, while not selling to Crown in the interim until the Commission requires Crown to provide nondiscriminatory access to cable companies and all other qualified entities. For the reasons described below, PG&E finds that option (3) provides the most prudent and fair outcome.

Option (1): This option would be consistent with PG&E's long-standing terms of sale with AT&T. Thus, because PG&E would be offering the same terms of sale for both ILECs and CLCs, this option would be nondiscriminatory with regards to these entities. However, as indicated by Crown Castle's Application for Arbitration, Crown retains the right to discriminate against cable companies, since the Commission provided a carve-out exception for CLCs in the ROW Decision.[13] Therefore, if Crown becomes a landlord owner under this option, Crown would have the freedom

[12] Crown Castle's Prepared Testimony, p. 4.

[13] See Crown's Application for Arbitration, p. 8.

to discriminate against cable companies. As a result, this option does not seem feasible unless the Commission reverses the CLC carve-out exception in the ROW Decision.

Option (2): This option runs counter to PG&E's long-standing terms of sale with AT&T. Thus, this option perpetuates discriminatory treatment, since PG&E would be offering AT&T and Crown Castle with entirely different terms of sale.

It is PG&E's understanding that Crown Castle desires this sweetheart deal of buying one-foot of pole space. However, PG&E's current policy of requiring all prospective purchasers to buy the entirety of the communications zone and assume all responsibilities and administration obligations related to tenants is deeply-rooted. Roughly half of PG&E's 2.4 million poles are jointly-owned, having been sold and administered according to these terms. Recorded instances of sales of interest that differ from these terms are few, and they ultimately constitute oversights, which do not set a precedent. PG&E finds it unreasonable for Crown Castle to expect that PG&E should change such established business practices applying to over one million jointly-owned poles in order to accommodate Crown's desired manner of ownership for what amounts to such a small fraction of the total number of jointly-owned poles.

Finally, as noted above, this sweetheart deal of purchasing one-foot of pole space would have serious discriminatory implications, considering that PG&E, for years, has offered terms of sale to AT&T that require the purchase of the entire communications zone and the assumption of landlord responsibilities for that zone.

As explained in the legal pleading accompanying this filing, PG&E finds nothing in the ROW Rules that prohibit a utility from exercising its ownership rights in setting terms of sale. For example, PG&E is aware that San Diego Gas and Electric Company (SDG&E) does not allow joint-ownership of the pole structures it owns, rather choosing to only allow access and attachment by license agreement. PG&E finds that it is reasonable for pole-owning electric utilities to set terms of sale for their poles, provided that the utilities continue to ensure nondiscriminatory access through tenancy license agreements, consistent with the ROW Decision.

Option (3): As described above, PG&E's Overhead Facilities License Agreement satisfies all of the ROW access requirements. Thus, this remains a viable nondiscriminatory option. If Crown Castle still seeks ownership in spite of the nondiscriminatory access that PG&E readily provides through its Overhead Facilities License Agreement, then PG&E urges the Commission to revise its ROW Rules to require Crown Castle to provide nondiscriminatory access to the pole space that it owns. Once the Commission does so, PG&E will resume offering its standard terms of sale to Crown Castle: purchase the entire communications zone, and assume all landlord responsibilities for that zone.

Q 13 What does Crown Castle say about its ability to serve as a landlord?

A 13 Crown Castle claims that requiring Crown to serve as a landlord will (1) impede competition, (2) conflict with Crown's business model, and (3)

require Crown to take on pre-existing tenants under the same agreements that PG&E held with those tenants.[14]

Q 14 How does PG&E respond?

A 14 With regards to impeding competition, Crown claims that "requiring one competitive provider to lease space to its competitors raises a host of competitive issues, including but not limited to the fact that an application to attachment would in effect reveal its business plans in advance to its competitor as part of the pole attachment process."[15] However, AT&T is a competitor of the CLCs, yet the ROW Decision expressly requires AT&T to provide nondiscriminatory access to its CLC competitors. Thus, PG&E does not believe that requiring Crown Castle to serve as a nondiscriminatory landlord similar to AT&T would pose any competitive issues not already present in AT&T's landlord-tenant relationship with CLCs. Furthermore, PG&E is aware that Southern California Edison (SCE) is a CPUC-approved CLC, yet pursuant to its obligations as an electric utility, SCE is still required under the ROW Decision to provide nondiscriminatory access to its poles to all qualified entities, including other CLCs.

With regards to its business model, Crown claims that its business "is not set up to manage tenants; it does not have the business process or personnel to enter the tenant management business and the company would incur significant costs over the long-term to restructure its business to manage tenants."[16] But to PG&E's understanding, one of Crown's core

[14] Crown Castle's Prepared Testimony, pp. 8-9.

[15] Crown Castle's Prepared Testimony, p. 9.

[16] Crown Castle's Prepared Testimony, p. 9.

businesses consists of licensing space to tenants for attachments on communication towers that Crown owns and/or controls. On its website, Crown indicates that it is the "largest provider of shared communications infrastructure in the US with approximately 40,000 cell towers comprising approximately 91,000 installations."[17] On that same webpage, Crown states that "leasing allows you to better allocate your capital and focus on your core business."[18] Thus, it is PG&E's understanding that Crown leases space to tenants for attachments on Crown's cell towers. Considering that Crown apparently serves as a landlord for its cell towers, PG&E reasonably believes that Crown possesses the ability and personnel to serve as a landlord for the poles that it owns. PG&E suggests that the Commission require Crown Castle to draft and execute license agreements to accommodate access and attachments to pole structures that Crown owns, just as other public utilities are mandated to do so by the ROW Decision.

With regards to pre-existing leasing agreements between PG&E and its tenants, Crown claims that "[i]f Crown Castle took on tenants, it would be beholden to existing leasing agreements that PG&E entered into with tenants. As an initial matter, such agreements may not be assignable from PG&E to Crown Castle without the consent of the existing tenant."[19] However, Crown is mistaken about PG&E's process of transferring a tenant to the new owner of the communications zone. When a communications

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17 See http://www.crowncastle.com/wireless-carriers/towers.aspx (retrieved October 21, 2018).

18 See *id*.

19 Crown Castle's Prepared Testimony, p. 9.

company approaches PG&E to request purchase of the communications zone through the NCJPA owner-to-owner process, PG&E informs the purchaser that it now has the responsibility of managing the preexisting tenant(s) in the communications zone. The purchaser is to then send a letter of intent to the preexisting tenant(s). If the preexisting tenant(s) would like to remain on the pole, then the purchaser would enter into a *new* licensing agreement with the preexisting tenant(s). Thus, PG&E does not require the prospective purchaser to "be beholden to existing leasing agreements" between PG&E and the preexisting tenant(s); likewise, the preexisting tenant(s) retain full freedom to remove their respective attachments and decide not to pursue a new licensing agreement with the purchaser of the communications zone.

Ultimately, PG&E believes that Crown Castle could successfully serve as a landlord, so long as the Commission requires Crown to provide nondiscriminatory access to cable companies and other qualified entities.

Q 15 Does Crown make any additional claims?

A 15 Yes. In its Prepared Testimony, Crown Castle makes broad claims that PG&E's terms for access somehow impede the State's policy objectives, including safety, reliability, and broadband deployment.[20]

Q 16 How does PG&E respond?

A 16 PG&E disagrees. PG&E appreciates the State's policy objectives and has continually sought to uphold and foster them. As noted above, since the Commission's issuance of D.98-10-058, PG&E has executed roughly 100

[20] Crown Castle's Prepared Testimony, pp. 7-8.

License Agreements to permit access by qualified entities to PG&E's support structures. Furthermore, PG&E is currently processing several new License Agreement inquiries. PG&E's historical and current practices have therefore aided in the deployment of infrastructure to further the spread of telecommunication services throughout PG&E's service territory.

PG&E appreciates Crown Castle's expressed concern regarding the safety and reliability of the poles, and by extension the electric distribution system, to which Crown makes attachments. PG&E remains vigilant in making continuous improvements to maintain system and pole safety. In spite of Crown's assertions to the contrary, PG&E has identified recent instances of Crown's construction, operation, and maintenance of pole infrastructure, including unauthorized attachments, that have raised concerns over Crown's actual regard for safety and compliance.

Q 17 What efforts does Crown Castle suggest that it has made toward resolution of this dispute?

A 17 Crown Castle states that Crown and PG&E participated in an executive meeting on May 10, 2018, and that the two parties had several follow-up communications at various levels of each organization for the next several months. Crown Castle also states that the two parties "discuss[ed] a solution in which Crown Castle would assist PG&E in hiring and paying for a third-party administrator for the poles at issue."[21]

Q 18 How does PG&E respond?

[21] Crown Castle's Prepared Testimony, pp. 9-10.

A 18 PG&E agrees with Crown that the two parties held an executive-level meeting on May 10, 2018, and that the two parties continued communications at various levels of each organization for the next several months. However, PG&E would like to clarify certain points, as well as address some mischaracterizations presented by Crown Castle.

During the May 10, 2018 executive-level meeting, PG&E offered to work with Crown towards the execution of a unique Overhead Facilities License Agreement containing slight modifications that could make the License agreeable to Crown. Of course, any modifications would have to be consistent with the ROW Rules and subject to the Commission's review and approval. Following that May 10, 2018 meeting, PG&E continued to engage with Crown in communications and proposals at multiple levels, including executive-level, in an effort to reach a mutually-agreeable resolution.

Crown Castle mischaracterizes the third-party pole administration offer described in its Prepared Testimony by alleging that PG&E would hire and pay for this third-party administrator. In fact, the opposite had been discussed in PG&E and Crown's communications: PG&E would help Crown find an entity that could administer Crown's poles and attachments, but Crown would ultimately be responsible for hiring and paying for this administrator. PG&E went so far as to prepare and provide a draft Request for Proposal (RFP) that Crown could use in searching for its third-party administrator. However, Crown expressed no interest in reviewing the RFP provided by PG&E or moving forward with the RFP.

Q 19 What does Crown say about the remaining unresolved issues between PG&E and Crown?

A 19 Crown notes only one unresolved issue: "Is PG&E entitled to condition Crown Castle's purchase of space on PG&E-owned poles on Crown Castle's agreement that it assume tenant management responsibility for current and future tenants in the communications zone (i.e. PG&E tenants)?"[22]

Q 20 What is PG&E's response?

A 20 PG&E agrees that under the ROW Decision, as it currently stands, Crown Castle cannot assume tenant management responsibility, since Crown can discriminate against cable companies. Thus, as previously noted, PG&E urges the Commission to revise the ROW Decision to require Crown to provide nondiscriminatory access to cable companies and other qualified entities for the poles that Crown owns.

Although overlooked by Crown, the core issue in this proceeding is: Does PG&E's Overhead Facilities License Agreement, which PG&E has offered to Crown Castle, satisfy the ROW Decision's nondiscriminatory access requirements?

Q 21 What is Crown Castle's position on PG&E's listed issue above?

A 21 Crown Castle suggests that PG&E's Overhead Facilities License Agreement violates the ROW Decision, considering Crown states that PG&E's "attach as a tenant" option "violate[s] the ROW Rules and den[ies] Crown Castle access to poles on terms and conditions to which it is entitled."[23]

Q 22 What is PG&E's response?

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[22] Crown Castle's Prepared Testimony, p. 10.

[23] See Crown Castle's Prepared Testimony, p. 6.

A 22 See PG&E's responses to Questions 8 and 10 above. PG&E strongly believes that its Overhead Facilities License Agreement satisfies all of the ROW Decision's requirements for nondiscriminatory access.

Q 23 What is the relief that Crown Castle is requesting?

A 23 Crown Castle requests that the Commission "order PG&E to approve past, present, and future Crown Castle JPAs without conditioning approval of such access on the requirement that Crown Castle assume tenant management responsibility for current and future tenants in the communications zone (i.e. PG&E tenants)."[24]

Q 24 How does PG&E respond?

A 24 PG&E believes that the Commission should find that PG&E's Overhead Facilities License Agreement satisfies the ROW Decision, and PG&E has therefore fulfilled its obligations under the ROW Decision to provide nondiscriminatory access to Crown Castle.

Q 25 Does this conclude this testimony?

A 25 Yes, it does.

[24] Crown Castle's Prepared Testimony, p. 11.