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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Crown Castle NG West LLC (U6745C), pursuant to Decision 98-10-058 for Arbitration of Dispute over Denial by Pacific Gas and Electric Company (U39E) of Access to Utility Support Structures.

Application 18-10-004

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).¹

1. Background

Crown Castle NG West LLC (Crown)² filed this application on October 10, 2018,³ to request arbitration, under the expedited dispute resolution procedures established by Decision (D.) 98-10-058,⁴ in which the Commission adopted rules to ensure that large and midsized incumbent local exchange carriers (ILECs), investor-owned electric

¹ The Commission's rules of practice and procedure may be found online at: http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/70731.htm.

² Crown (then named NextG Networks of California, Inc.) received authorization to provide limited facilities-based services as a non-dominant interexchange carrier in D.03-01-061 and was granted authority as a full facilities-based carrier in D.07-04-045. Crown is a competitive local exchange carrier (CLEC).

³ Crown's application included an Exhibit 1-Testimony of Scott Scandalis, Asset Manager, Small Cell Solutions for Crown.

⁴ See D.98-10-058 dated October 22, 1998 in Rulemaking (R.) 95-04-043 (ROW Decision). The ROW Decision provides that arbitration disputes there under shall generally follow arbitration rules adopted as Rule 3 of Resolution ALJ-174.

Footnote continued on next page

utilities⁵ and local governments grant CLECs such as Crown, nondiscriminatory access to poles, ducts, conduits and rights-of-way (ROW).⁶

Pacific Gas and Electric Company (PG&E) filed its Response to the Application for Arbitration (Response) on October 25, 2018.⁷ The parties filed a joint revised arbitration statement on October 29, 2018.⁸

To summarize the dispute, PG&E has offered to lease space to Crown under PG&E's Overhead Facilities License Agreement (License Agreement) for certain of its poles in northern California. Crown desires to purchase, rather than lease space on the poles. PG&E contends that the ROW Decision does not compel it to sell space on its poles. Crown says that pole ownership is an integral part of its network expansion. Crown and PG&E are members of the Northern California Joint Pole Association (NCJPA).⁹ Crown has purchased pole space in the past by submitting a joint pole authorization form (JPA) to current NCJPA pole owners.¹⁰ Crown contends that PG&E has not observed the JPA procedure, has instead added additional prerequisites for attaching to PG&E poles. Crown has attached to PG&E poles under protest, which PG&E alleges are unauthorized attachments. Crown seeks determination about whether PG&E may place unique prerequisites upon attachment to its poles. Crown further

⁵ Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Edison Company (Edison) are the major electric utilities in California.

⁶ In D.16-01-046, the Commission extended ROW Rules to provide commercial mobile radio service carriers (CMRS carriers) with the same nondiscriminatory access to utility ROW as CLECs. D.18-04-007 dated April 26, 2018 further amended the ROW rules to wireless telecommunications facilities installed by CLECs.

⁷ PG&E's Response included Rebuttal Testimony of Tinamarie De Teresa, Manager of PG&E's Joint Pole/Joint Utilities group.

⁸ See Joint Statement of Crown and PG&E on Unresolved Issues dated October 29, 2018. The ROW decision requires a revised arbitration statement, which is referred to as a Revised Statement of Unresolved Issues in ALJ 174-Rule 3.8.

⁹ NCJPA is comprised of municipalities, irrigation districts, electric utilities, telephone companies, wireless companies and cable providers and was formed to promote efficiency of administering ownership and occupancy of jointly owned poles.

¹⁰ Pursuant to NCJPA rules, upon submission of a JPA, pole owners may reply and modify the JPA or, if there is no reply, the JPA is deemed approved after 45 days and the applicant may then install its facilities.

contends that, under the ROW Decision, PG&E may only impose conditions on attachment to its poles which are “necessary to endure the safety and engineering reliability of its facilities.”¹¹ PG&E contends that its License Agreement, under which it has offered leased space to Crown, satisfies the ROW Decision’s nondiscriminatory access requirements.

As provided in ALJ-174, an initial arbitration meeting was held on October 30, 2018. The arbitration hearing date of November 7, 2018 initially proposed by the Administrative Law Judge assigned as Arbitrator (ALJ Arbitrator) presented schedule conflicts for the parties. Immediately after the initial arbitration meeting, the parties met, conferred and jointly provided the ALJ Arbitrator with proposed mutually agreeable arbitration dates by email.¹² The arbitration hearing was held on November 28 and 29, 2018.

2. Need for Hearing

There is a need for arbitration hearings. Pursuant to the ROW Decision,¹³ arbitration hearings must be conducted as provided in Resolution ALJ-174, but subject to expedited timeframes.

Paragraph IX “Expedited Dispute Resolution Procedures” of Appendix A to the ROW Decision and subsection C of Rule 3.3 under ALJ-174 govern the procedures for this arbitration.

2.1 Mark-Up Conference

The initial portion of the first day of the arbitration hearing was utilized as a mark-up conference, during which the ALJ Arbitrator heard the concerns of the parties to determine whether the parties could informally resolve their differences.

¹¹ Application at 7 citing Row Decision, 1998 Cal. PUC LEXIS at 114-115.

¹² The ROW Decision requires that arbitration hearings be conducted within 25-27 days after the application is filed and ALJ-174 Rule 3.9 requires that the arbitration be held within 10 days after the Response is filed. However, the Commission’s Rules provide that parties may make a motion for extension of time orally, by e-mail or by letter to the ALJ. The e-mail is deemed a Motion for Extension of Time under Commission Rule 11.6.

¹³ See D.98-10-058 at 112

2.2 Limited Evidentiary Hearings

If the parties are unable to resolve their factual disputes during the mark-up conference, the ALJ Arbitrator shall convert the mark-up conference to limited evidentiary hearings. Such evidentiary hearings shall begin on the same day as the mark-up conference and shall continue the following day, as needed.

The scope of factual issues to be determined during limited evidentiary hearings, shall be outlined on the record following the conclusion of the parties' mark-up conference. The mark-up conference and limited evidentiary hearing (arbitration hearings) shall conclude within three days, unless the ALJ Arbitrator determines otherwise.

3. Issues

The issues to be addressed in this proceeding shall be based upon the Application, the Response, the parties' joint statement on unresolved issues and the discussions during the initial arbitration meeting and mark-up conference.

In broad terms, the parties concerns leading to the arbitration include the following:

1. Does PG&E's offer to lease space to Crown under PG&E's License Agreement satisfy the ROW Decision's nondiscriminatory access requirements?
2. Do the ROW Decision's nondiscriminatory access requirements, or as amended by D.18-04-007, compel both lease and sale of space on PG&E poles?
3. Does the JPA procedure established by the NCJPA require a pole owner to sell or lease space on its poles, and if so, are NCJPA procedures in conflict with nondiscriminatory access requirements under the ROW Decision?
4. Should and may the Commission compel PG&E to sell space on its poles to promote broadband deployment?

5. Are there valid safety or reliability concerns that justify PG&E’s decision to lease (not sell) space on its poles to Crown?¹⁴

4. Schedule

It is the Commission’s intent to complete this proceeding within the timeframes required in the ROW Decision and ALJ-174. The below schedule reflects adherence to the timeframe intervals in the decision, with minor adjustment for Commission and federal holidays. The timeframe deadlines may be extended by order of the Commission (§ 1701.5(a)).

EVENT	DATE
Arbitration Hearing Conducted	November 28-29, 2018
Post-Hearing Briefing	December 10, 2018
Draft Arbitrator’s Report Issued	December 19, 2018
Comments on Draft Arbitrator’s Report	January 7, 2019
Final Arbitrator’s Report Issued	January 31, 2019
Agreement Reflecting Arbitrator’s Report	February 8, 2019
Decision on Arbitrated Agreement Placed On Commission Agenda	March 14, 2019

Following issuance of the final arbitrator’s report, the parties must develop a revised agreement, reflecting the findings within the final arbitrator’s report. The

¹⁴ The Commission adds this concern which is integral to any proceeding that the Commission undertakes.

ALJ Arbitrator will prepare a decision incorporating his/her findings and the revised agreement, which shall be placed (after consultation with the assigned Commissioner) on the Commission's agenda.

5. Ex Parte Restrictions

Ex parte communications shall be prohibited in this arbitration proceeding.

6. Public Participaion in Arbitration

Pursuant to Pub. Util. Code § 1711(a), the public was notified of this proceeding by notice published in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted it on the website of the Commission's Business and Community Outreach Office.

Participation in the arbitration conferences and hearings is strictly limited to the parties (and their staff and/or experts). Arbitration conferences and evidentiary hearings may be attended by advisory staff from the Assigned Commissioner's office (and appropriate division staff). However, advisory staff shall not directly participate in the hearings nor provide testimony.

7. Public Comment

Resolution ALJ-174 allows non-parties to comment upon the Draft Arbitrator's Report. Comments will be accepted from non-parties, but must be filed in accordance with the Commission's electronic filing protocols. Any person interested in commenting about this proceeding, who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures, is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYY), or send an e-mail to public.advisor@cpuc.ca.gov.

8. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the Administrative Law Judge (ALJ).

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

9. Assignment of Proceeding

President Michael Picker is the Assigned Commissioner and ALJ Patricia B. Miles is designated as the Arbitrator for this proceeding.

IT IS RULED that:

1. The scope of this proceeding is as described above.
2. The remaining schedule for this proceeding Application (A.)18-10-004 is set forth in Section 4 of this ruling. The assigned Commissioner and Arbitrator may agree to adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
3. Arbitration hearings are necessary and were held November 28-29, 2018.
4. *Ex parte* communications are prohibited in this proceeding.
5. The assigned Arbitrator is Administrative Law Judge Patricia B. Miles
Dated December 10, 2018, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner