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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) for Commission Approval Under Public Utilities Code Section 851 of an Irrevocable License for use of Utility Support Structures and Equipment Sites to ExteNet Systems (California) LLC.	Application No. 15-07-012 (Filed July 7, 2015)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) AMENDED RESPONSES TO ADMINISTRATIVE LAW JUDGE'S REQUEST FOR SPECIFIED INFORMATION

PUBLIC VERSION
(CONFIDENTIAL INFORMATION AND PART OF ATTACHMENT 4 REDACTED)

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Dated: January 15, 2016

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OF THE STATE OF CALIFORNIA

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I. INTRODUCTION

On October 16, 2015, Pacific Gas and Electric Company ("PG&E" or "the Company") filed responses (herein referred to as "Statement") to the "Administrative Law Judge's ("ALJ") Ruling Directing Pacific Gas and Electric Company to Submit a Document Containing Specified Information," issued on September 18, 2015. The responses were also filed pursuant to the ALJ's ruling issued on August 28, 2015, as modified by the ALJ at the Prehearing Conference held on September 15, 2015.

PG&E files these amended responses in response to the "Administrative Law Judge's Ruling Granting in Part and Denying in Part Pacific Gas and Electric Company's Motion of October 16, 2015 to File Certain Information Under Seal," issued on January 5, 2016. In compliance with Ordering Paragraphs 1 and 3 of the Ruling, PG&E's amended responses redacts information from the responses for which PG&E had met its burden of demonstrating is confidential (Table 3 of Ruling), and redacts the names of PG&E employees from one email in Attachment 4.

In filing these amended responses, PG&E reserves its opportunity to request review of the January 5, 2016 ruling on PG&E's Motion to File Certain Information Under Seal.

II. PG&E'S RESPONSES TO ALJ QUESTIONS RELATING TO THE PROPOSED TRANSACTION

1. An explanation of whether the Right-of-Way (ROW) Rules adopted by Decision (D.) 98-10-058 apply to the PG&E-ExteNet Systems License Agreement (hereafter, "License Agreement").

PG&E's Response

The ROW Rules, contained in Appendix A to Decision ("D.") 98-10-058, apply to the PG&E-ExteNet Systems (California), LLC ("ExteNet") License Agreement ("License Agreement" or "Agreement"). Subject to Commission regulations regarding line safety, the ROW Rules expressly grant competitive local exchange carriers ("CLCs") such as ExteNet access to utility facilities such as conduit and poles located in the public ROW. Further, the ROW Rules grants to utilities the discretion and "ability to negotiate with a telecommunications carrier…the price, terms and conditions for access to its right of way and support structures."[1/] The ROW decision commented extensively on parties' ability to negotiate terms and conditions that vary from the minimum terms and conditions set forth in the ROW Rules:

> Given the complexities of utility facilities and the diversity of ROW access needs, it is not feasible to craft a set of rules or tariffs which addresses every conceivable situation which may arise. Individual carriers must negotiate the terms of ROW access based on the particular circumstances of each situation...In order to guide parties in negotiations, we shall therefore adopt a general set of rules governing ROW access which strike a balance in providing some degree of detailed performance standards while leaving discretion to parties to tailor specific terms to the demands of individual situations.
>
> It is unrealistic to expect that all ROW access agreements will be uniform with respect to prices, terms, or conditions. Differences are acceptable as long as they are justified by the particular circumstances of each situation, and do not merely reflect anticompetitive discrimination among similarly situated carriers.[2/]

1/ D.98-10-058, Appendix A., Section VI.A.1.
2/ D. 98-10-058, *mimeo,* pp. 6-7 (emphasis added).

In accordance with the ROW Rules, PG&E and ExteNet negotiated the prices, terms, and conditions of the License Agreement, contained in Confidential Appendix A to PG&E's Application in this proceeding. The License Agreement contains sensitive pricing information that is based on the unique terms and conditions negotiated between PG&E and ExteNet.

2. **A calculation of PG&E's current annual cost of ownership for utility poles as defined by Pub. Util. Code § 767.5(c)(2)(A), with supporting work papers showing the calculation and listing the sources of information used in the calculation.**

PG&E's Response

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future. Confidential Attachment 1 to this Statement provides PG&E's cost of ownership for pole attachments using the formula prescribed in Public Utilities Code Section 767.5 (c)(2)(A).[3/] The supporting work papers, calculation and sources are identified in Confidential Attachment 1.

3. **Calculations and supporting work papers that show whether, and to what extent, the rates, fees, and charges in the License Agreement enable PG&E to recover during each year of the License Agreement, and over the entire term of the agreement, the following:**

    a. **Make-ready costs as defined in Pub. Util. Code § 767.5(c)(1) and D.98-10-058.**

PG&E's Response

Pursuant to the License Agreement, ExteNet will fully reimburse PG&E for all make-ready work costs as they are incurred during the full term of the License Agreement. The rate of reimbursement is PG&E's costs plus an adder.[4/]

According to Section 767.5(c)(1), make-ready work falls under the definition of "rearrangement." "Rearrangement" is defined as "work performed… to, on, or in an existing support structure to create such surplus space or excess capacity as is necessary to make it

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3/ All "Sections" references are to the Public Utilities Code, unless otherwise stated.
4/ License Agreement, Section 5.7(a) at p. 16.

usable…."[5/] Under Section767.5, PG&E would recover "A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the cable television corporation."[6/]

In order to provide context for the make-ready charges set forth in the Agreement, PG&E is providing a side-by-side example of cost recovery under Section 767.5 (c)(1)[7/] versus recovery under the License Agreement for a sample project shown in Confidential Attachment 5. The table shows that the one-time cost recovery for make-ready work is greater under the License Agreement than under Section 767.5 (c)(1):

<table>
<tr><th colspan="2">Make Ready Cost Recovery Comparison</th></tr>
<tr><th>Section 767.5(c)(1)</th><th>License Agreement</th></tr>
<tr><td>[(Hourly rates * actual hours) + other costs] = $3,351</td><td>[(Hourly rates * actual hours) + other costs] * adder = $4,524</td></tr>
<tr><td colspan="2">PG&E's standard labor rates are used in both recovery methods.</td></tr>
<tr><td colspan="2">The fees collected under the License Agreement exceed the make-ready cost recovery as stated in Section 767.5.</td></tr>
</table>

b. An annual fee for pole attachments at least equal to the fee in Pub. Util. Code § 767.5(c)(2)(A).

PG&E's Response

The License Agreement will permit PG&E to recover during each year of the License Agreement an annual fee at least equal to the fee stated in Section 767.5(c)(2)(A).

The annual fee as stated in Section 767.5(c)(2)(A) is $2.50 per foot or 7.4% of a public utility's annual cost of ownership, whichever is greater. Confidential Attachment 1 to this Statement shows the calculations and supporting work papers identifying the 2015 annual fee as $17.10/foot (using the 7.4% formula) to attach to PG&E poles (assuming 1 foot of pole space is allocated). PG&E updates this table on an annual basis.

5/ Public Utilities Code Section 767.5(a)(8).
6/ Public Utilities Code Section 767.5(c)(1).
7/ It should be noted that ExteNet is not a cable TV corporation but that the Section 767.5 pricing formula may be applied to telecommunications carriers such as ExteNet.

While this ALJ question refers to fees for pole attachments, the License Agreement offers ExteNet space in or on PG&E infrastructure and a suite of services which if measured on a per-mile basis would yield $18,567.96 per mile per year. Although not entirely comparable, a calculation follows that compares the fees PG&E would receive under the License Agreement to the fees that would be recovered under Section 767.5, and shows that the fees collected under the License Agreement exceeds the fees that would be recovered using the cost of ownership formula in Section 767.5:

2015 Annual Pole Attachment Fee Comparison	
Section 767.5	**License Agreement**
18 poles/miles/year * $17.10/pole = **$307.80/mile/year**	$1,547.33/mile/month * 12 months/year = **$18,567.96/mile/year**
Assumption: 18 poles/mile.	
Section 767.5 cost of ownership formula permits $17.10/pole attachment/year (2015).	
License Agreement permits $1,547.33/mile/month (2015).	
The fees collected under the License Agreement exceed the cost of ownership fee in **Section** ***767.5.***	

c. An annual fee for access to support structures other than poles at least equal to the fee in Section 767.5(c)(2)(B).

PG&E's Response

The License Agreement will permit PG&E to recover during each year of the Agreement an annual fee for access to support structures at least equal to the fee stated in Section 767.5(c)(2)(A).

The annual fee as stated in Section 767.5(c)(2)(A) is $2.50 or 7.4% of the public utility's annual cost of ownership, whichever is greater. Confidential Attachment 4 shows the calculations and supporting work papers identifying the 2015 annual fee as $4,268.88/foot (using the 7.4% formula) to install in PG&E conduit.

The License Agreement here offers ExteNet space in or on PG&E infrastructure and a suite of services including inspection, maintenance, and repair of the fiber optic cable over the agreed PG&E pathway. Although not perfectly comparable, the side-by-side comparison below displays the values in miles per year, and shows that the fees collected under the License Agreement exceeds the fees that would be collected using the cost of ownership formula in Section 767.5:

2015 Annual Access to Support Structure Other Than Pole Attachment Fee Comparison	
Section 767.5	**License Agreement**
$2.45/foot/year * .33 * 5,280 feet/mile = **$4,268.88/mile/year**	$1,547.33/mile/month * 12 months/year = **$18,567.96/mile/year**
Assumption: 33% of an average electrical conduit is consumed by the installation of 3rd party fiber optic cable.	
Section 767.5 cost of ownership formula permits $2.45/foot of support structure/year (2015).	
License Agreement permits $1,547.33/mile/month (2015).	
The fees collected under the License Agreement exceed the cost of ownership fee in Section 767.5.	

4. **An estimate of how many utility poles and other support structures that ExteNet Systems expects to use under the License Agreement.**

<u>PG&E's Response</u>

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future.

ExteNet's April 2015 estimate of the cumulative conduit miles it will occupy under the License Agreement is as follows:

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

5. **The maximum number of utility poles and other support structures that ExteNet Systems may use under the License Agreement.**

<u>PG&E's Response</u>

There is no maximum number of utility poles, miles of underground conduit, or other support structures that ExteNet may use under the License Agreement.

6. **Information regarding how much space that ExteNet Systems attachments will typically occupy on PG&E support structures (e.g., one foot of vertical pole space for each fiber optic cable attached to a pole).**

<u>PG&E's Response</u>

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the License Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future. For this reason, PG&E is not in possession of information regarding how much space ExteNet will typically occupy on PG&E's poles. In the unlikely event that ExteNet decides to attach to pole structures under the License Agreement, PG&E's best estimate is that ExteNet on average will occupy one foot of vertical space, similar to other fiber optic cables.

PG&E also cannot provide an overall estimate of the amount of space that ExteNet's fiber optic cable will occupy in PG&E's conduit because the size of PG&E's conduit varies throughout PG&E's system. PG&E estimates ExteNet's fiber optic cable may occupy 33 percent of a PG&E conduit, though this estimate will vary depending on the actual conduit size, fiber cable diameter, and inner-duct used. Each ExteNet application for attachment or access will be reviewed by either a PG&E electric estimator or planner to ensure compatibility with PG&E's current electric operations plans.[8/]

8/ License Agreement, Section 6.3 (a), at p. 19.

7. **Information regarding the specific space on utility poles that will be occupied by ExteNet Systems attachments (e.g., whether ExteNet Systems will attach fiber optic cables to the communication space on joint-use poles, and whether ExteNet Systems will attach equipment boxes to the common space between the ground line and the communication space on joint-use poles).**

PG&E's Response

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future.

8. **A description of PG&E's authority under joint-pole ownership agreements to license the use of the communication space on poles and to receive the revenues from such licenses.**

PG&E's Response

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future. Under the Northern California Joint Pole Association ("NCJPA") Agreement and associated Routine, electric utilities own the electric zone of a jointly owned pole (including the safety clearance zone), and communication owners own the communication zone. If ExteNet wanted to attach to PG&E's jointly owned poles, ExteNet likely would apply to the communications owner, with the associated revenues retained by the relevant owner.

The NCJPA permits owners to license communication space on poles to tenants. Owners are charged a rate per foot of pole space that varies depending on the age and depreciation of the pole. Confidential Attachment 2 is a chart identifying the current NCJPA per foot rates.

9. **Total estimated revenues that PG&E will receive each year under the License Agreement based on the response to Item 4, above. PG&E's response should show all assumptions and calculations, and provide citations to applicable sections of the License Agreement that specify the rates, fees, and charges that will comprise PG&E's revenues.**

PG&E's Response

The total estimated revenues that PG&E will receive each year under the License Agreement, based on the estimated miles of conduit ExteNet plans to utilize each year (see PG&E response to Question 4, above) are as follows:[9]

[redacted]

[redacted]

[redacted]

10. **Total estimated revenues, if any, that joint-pole owners other than PG&E will receive for pole attachments made pursuant to the License Agreement. PG&E's response should show all assumptions and calculations, and provide citations to applicable sections of the License Agreement, if any, that specify the rates, fees, and charges that will comprise other joint-pole owners' revenues, if any.**

<u>PG&E's Response</u>

ExteNet does not currently anticipate installing fiber optic cable on PG&E's poles under the Agreement, although ExteNet reserves a contractual right to apply to use PG&E's poles in the future.

There are no sections in the License Agreement that specify the rates, fees, and charges that will comprise other joint-pole owners' revenues. Under the NCJPA Agreement and associated Routine, revenues are retained by the owner of the relevant portion of the pole and are not shared with other joint pole owners.

11. **An explanation of whether and how the License Agreement enables PG&E to recover its entire cost of ownership associated with the space on PG&E support structures occupied by ExteNet Systems facilities. If the License Agreement does not provide for the recovery of PG&E's entire cost of ownership for such space, how much is the shortfall, and why is this reasonable?**

<u>PG&E's Response</u>

The License Agreement will enable PG&E to recover its entire cost of ownership associated with the space on PG&E support structures occupied by ExteNet facilities.

As shown in response to Questions 3b, 3c, and Confidential Attachment 3, the License Agreement requires ExteNet to provide to PG&E a monthly fee for space in or on PG&E infrastructure and a suite of services. If based on conduit space, then the minimum annual fee will enable PG&E to recover more than the costs of ownership associated with "space" on

PG&E support structures; therefore, no shortfall will exist under the License Agreement. For example, in 2015 the cost of ownership of 100% of a conduit is $ per foot, whereas under the License Agreement the cost for use of one-third of a conduit would be $3.51 per foot.

12. **ExteNet Systems' utility ID number and the Commission Decision granting a Certificate of Public Convenience and Necessity (CPCN) to ExteNet Systems.**

PG&E's Response

ExteNet System's utility ID number is U-6959-C. The Commission decision granting ExteNet (formerly Clearlinx) a Certificate of Public Convenience and Necessity ("CPCN") to operate as a CLC is Decision No. 06-04-063.

13. **An explanation of whether ExteNet Systems' CPCN provides ExteNet Systems with authority to:**

    a. **Operate as a facilities-based telecommunications carrier.**

PG&E's Response

ExteNet was certified as a facilities-based competitive telecommunications carrier in D.06-04-063. ExteNet expressly stated in its CPCN application that it intended to undertake outside plant construction, and the Commission approved the application based on that request.

    b. **Install the facilities contemplated by the License Agreement.**

PG&E's Response

Pursuant to G.O. 128 (Rule 44.1), PG&E may install PG&E-owned dielectric communication cables in the same conduit with electric supply cables or conductors. Pursuant to the License Agreement, PG&E has contracted with ExteNet to perform this fiber optic cable installation under PG&E's direction. Notwithstanding the fact that ExteNet has a CPCN that would allow it to install the facilities contemplated by the License Agreement, in this case, PG&E will own the cable and ExteNet will have the right to use certain fibers in the cable.

14. **An explanation regarding whether and how all facilities attached to PG&E support structures under the License Agreement will:**

    a. **Be installed, operated, and maintained in a safe manner.**

PG&E's Response

PG&E will ensure the safety of all facilities that become part of its overall system. All facilities to be installed in PG&E's conduit will be installed, operated and maintained in accordance with General Order ("G.O.") 128 (and if facilities are installed on poles, then G.O. 95), as well as applicable local, state, and federal safety regulations including the California Division of Occupational Safety and Health ("Cal/OSHA") Title 8.[10/] ExteNet's contractors will additionally be required to comply with PG&E's safety standards and practices and the work near energized electrical facilities must be performed by qualified electric workers per Cal/OSHA Title 8.[11/] The installation must also conform and be performed according to PG&E telecommunications and electric operations standards.[12/] PG&E will be present during installation to allow ingress and egress and to perform a safety watch while ExteNet's contractors perform work in PG&E's underground facilities.[13/]

The License Agreement contains additional clauses intended to ensure the safe installation, operation and maintenance of ExteNet's facilities. For example, Exhibit J of the License Agreement, entitled "PG&E Safety Rules," requires ExteNet to work under PG&E supervision and adhere to PG&E's safety standards and practices. The License Agreement also contains sections mandating minimum work standards and the use of contractors:

> 7.2 Work Standards. All work to be performed hereunder by CUSTOMER shall be performed in a good, workmanlike manner and in compliance with the requirements of applicable electrical safety codes, prudent utility practice, and all applicable other laws, ordinances, codes, regulations and Approvals of any government authority having jurisdiction over the work. Work in areas adjacent to electrically energized equipment shall be performed in accordance with PG&E's established safety rules, as set forth on Exhibit J.
>
> 7.9 Use of Contractors. CUSTOMER shall have the right, . . . to have any of the construction and installation work to be provided by

10/ License Agreement, Section 7.2 at p. 21 and Section J.3 at p. 60.
11/ License Agreement, Section 7.2 at p. 21 and Section J.3 at p. 60.
12/ License Agreement, Section 7.2 at p. 21 and Section 7.9 at p. 22.
13/ License Agreement, Section 7.10 at p. 22.

> CUSTOMER under the terms of this Agreement performed by the Contractor, or one or more other contractors or subcontractors; provided that the Contractor and any other contractor or subcontractor retained by CUSTOMER to install the Cable or Equipment Stations shall be subject to the prior approval of PG&E. . . .

Further, the License Agreement permits PG&E to access and inspect construction in progress:

> 7.10 PG&E Facility Access and Inspection of Construction. PG&E may. . . provide access to PG&E Facilities and, perform routine inspections of construction while in progress. A PG&E representative may be on-site during all construction work to perform functions such as safety watch, protection of PG&E Facilities, and obtaining clearances....

Next, the License Agreement requires PG&E to maintain the facilities installed onto its system:

> 8.1 Maintenance Responsibilities. During the Term and any extension thereof, PG&E shall be responsible for the Maintenance of the Cable, the Cable Accessories, and PG&E Facilities along the Cable Route up to the Point of Interface.

As a final example of safety regulations contained in the License Agreement, PG&E is responsible for performing all cable restoration, if any, in adherence with its specific safety standards and practices.[14/]

b. Not adversely affect the safety and reliability of PG&E's other facilities.

PG&E's Response

PG&E reviewed the terms and conditions of the License Agreement prior to filing its application for Commission approval of this transaction. Based on PG&E's practice of installing fiber optic cable, PG&E determined that installation and operation of fiber cables into PG&E's underground conduit can be performed without affecting the safety and reliability of PG&E's other facilities in its conduits. Should PG&E determine that its ability to provide safe and reliable service to its customers may be affected by cables proposed to be installed or installed under the License Agreement, PG&E will suggest an alternate route, rearrange, or remove the

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14/ License Agreement, Section 8.3 at p. 25.

fiber optic cable. Section 3.10 of the License Agreement grants PG&E the contractual authority to operate its conduit facilities in anyway deemed necessary to ensure the safety and reliability of utility operations:

> 3.10 Reservation of Certain PG&E Rights. PG&E reserves for itself, its successors and assigns, the right to use PG&E Facilities, Equipment Sites or Equipment Stations and the Right of Way, or any portion thereof, for any purpose that PG&E may find necessary, together with the right to enter upon or into PG&E Facilities and the Right of Way, or any portion thereof, at all times, and for any and all purposes. These rights may be exercised by PG&E without any notice to or consent from CUSTOMER and without payment of any compensation to CUSTOMER.

In addition, Section 13.1 of the License Agreement further vests PG&E with authority to relocate ExteNet facilities as necessary for utility operations:

> 13.1 Discontinuance and Relocation. PG&E shall be entitled to discontinue its use of and to relocate any part of its electric transmission or electric or gas distribution system, including any PG&E Facilities or to discontinue use of any portion of the Right of Way. However, PG&E shall not take any action to release or relinquish voluntarily its underlying property interests along the Right of Way without first notifying CUSTOMER. In the event of any such discontinuance and relocation which necessitates discontinuation or relocation of the Cable or Cable Route, PG&E shall give written notice to CUSTOMER as soon as reasonably practicable.

Finally, in the event of a disruption to service, restoration of utility services to customers will take priority over restoration of telecommunication services, as stated in Section 8.3 of the License Agreement, entitled "Restoration Plan":

> (a) Priorities and General Requirements. The Detailed Restoration Plan shall contain the following priorities and general requirements:
>
> PG&E's obligation to maintain and repair the Cable, Cable Accessories, PG&E Facilities, and Right of Way and any activities incidental thereto shall be subordinate to, and shall not conflict with, PG&E's rightful use and operation of its transmission and distribution facilities. In the event both PG&E Facilities and Cable/Cable Accessories require Maintenance or repair, PG&E shall use reasonable efforts to repair the PG&E Facilities, Cable and Cable Accessories concurrently. However, the restoration of the Cable and Cable Accessories shall be at all times subordinate to the restoration of PG&E Facilities.

15. A description of who will perform the periodic inspections required by General Order 95, Rule 80.1, of the communication facilities installed by ExteNet Systems under the License Agreement.

PG&E's Response

In the event that ExteNet attaches to poles under this License Agreement PG&E will become the owner of the fiber cable, and PG&E will perform the periodic inspections as required by G.O. 95, Rule 80.1.

a. If PG&E performs these inspections, an explanation of whether and how PG&E will recover the costs it incurs to perform these inspections, and a citation to the specific section(s) of the License Agreement (A) that address PG&E's obligation to inspect communication facilities, and (B) PG&E's contractual right to recover the costs it incurs for such inspections.

PG&E's Response

(A) Pursuant to Section 8.1 of the License Agreement, PG&E is responsible for performing maintenance (inspection is part of maintenance) and will perform any necessary inspections.

(B) Pursuant to Section 8.1 of the License Agreement, PG&E and ExteNet will be responsible for inspection costs based on the proportional number of fibers each party has a right to use. Therefore, PG&E has a contractual right to recover the costs it incurs for inspection of ExteNet's fibers.

16. Section 3.4 of the License Agreement provides PG&E's affiliates with unrestricted use of PG&E Fibers. Section 12.1 provides PG&E with the ability to assign its rights under the agreement to an affiliate.

a. An explanation of whether such use and assignment is subject to prior Commission approval pursuant to Pub. Util. Code § 851 and, if so, the timing of such approval.

PG&E's Response

PG&E does not anticipate a transaction that would transfer or assign cable fibers to a PG&E affiliate under the pending License Agreement.

In the unlikely event PG&E decides to assign fibers to a PG&E affiliate, such assignment would potentially be subject to Section 851. Depending on the details of the transaction, an assignment to an affiliate, as with any third party, could be governed by G.O. 69-C, which allows temporary uses of utility property by a third party, rather than Section 851.

The timing of approval for an assignment to an affiliate would depend on the value of the transaction and the type of approval required (i.e., whether the request for Commission approval could be sought by an advice letter for transactions valued at less than five million dollars, or whether it requires a formal Section 851 application for transactions valued at more than five million dollars).

b. An explanation of whether such use and assignment is subject to the Commission's affiliate transaction rules adopted byD.97-12-088, as modified by subsequent decisions.

<u>PG&E's Response</u>

PG&E's assignment of fibers to an affiliate under Section 3.4 of the License Agreement would be subject to the Affiliate Transaction Rules adopted by D. 97-12-088, as modified by subsequent decisions.

As stated above, PG&E does not anticipate assigning cable fibers to an affiliate under Section 3.4 of the License Agreement.

c. What specific provisions in the License Agreement, if any, set the terms, conditions, fees, and charges applicable to PG&E affiliates' use of facilities installed under the agreement?

<u>PG&E's Response</u>

The License Agreement between PG&E and ExteNet does not purport to contain provisions that would govern the terms, conditions, fees and charges applicable in a transfer of cable fibers to a PG&E affiliate. Should PG&E propose such a transaction with a PG&E affiliate, PG&E would at that time negotiate a separate set of application terms, conditions, fees and charges and then submit to the Commission for approval.

d. **What specific provisions in the License Agreement, if any, set the terms, conditions, fees, and charges applicable to the assignment of PG&E's rights under the License Agreement to PG&E affiliates?**

PG&E's Response

As stated in response to question 16c above, the License Agreement between PG&E and ExteNet does not purport to contain provisions that would govern the terms, conditions, fees and charges applicable in a transfer of cable fibers to a PG&E affiliate.

17. **An explanation of how all the revenues and expenses that accrue to PG&E under the License Agreement will be treated for ratemaking purposes.**

PG&E's Response

PG&E's Application in this proceeding proposed the following ratemaking treatment for revenues and expenses that may accrue to PG&E under the License Agreement:

> As consideration for the grant of the license agreement described in this application, ExteNet Systems will pay a monthly fee that is proportionate to its utilization of PG&E infrastructure. The sum of the monthly fees for a given year will be compared to a designated minimum annual fee at the beginning of the following year, and a true-up will occur if the monthly fees fall short of the minimum annual fee for such year. That fee represents compensation from ExteNet Systems to the Company for the irrevocable license in effect at the time.
>
> Any compensation received by PG&E from ExteNet Systems will be credited as follows:
>
> **Electric Transmission Property**
> Proceeds from the license fees received for sites located on PG&E's electric transmission property are subject to Federal Energy Regulatory Commission ("FERC") jurisdiction for ratemaking. All costs for PG&E's electric transmission system are now part of FERC ratemaking for transmission service in PG&E's transmission owner cases. PG&E will account for license fees related to electric transmission property pursuant to applicable FERC rules for accounting and ratemaking.
>
> **Electric Distribution Property**
> Site license fees for sites located on PG&E's electric distribution property will be treated as Electric Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.

The Commission approved similar ratemaking proposals in D.13-05-004, Conclusions of Law No. 1 and 2, pp. 7-8, and D.09-07-035, Ordering Paragraph No. 5, pp. 26-27.[15/]

a. **Will PG&E's cost of ownership for the space on PG&E's support structures that is occupied by ExteNet Systems facilities continue to be included in PG&E revenue requirement in general rate case proceedings.**

PG&E's Response

Yes, PG&E's cost of ownership of support structures will be included in PG&E's GRC revenue requirement. Upon Section 851 approval of the License Agreement and ExteNet's installation of facilities, incremental expenses and revenues associated with ExteNet will be included in future GRCs. The revenue from ExteNet will be treated as other operating revenue and the expenses will go into PG&E's Operations and Maintenance ("O&M") expenses for ratemaking purposes.

18. **An explanation of why the provision in the License Agreement at Section 5.3(a), second sentence, is reasonable. (Note: PG&E has designated all of Section 5.3(a) as confidential.)**

PG&E's Response

The License Agreement at Section 5.3(a) states that PG&E will receive an Active Building Lateral Fee. This fee reimburses PG&E for situations in which a building with one or more customers is connected to ExteNet's fiber using a PG&E pathway. According to the Agreement, the Active Building Lateral Fee is Two Hundred Fifty Eight Dollars and Seventy Five Cents ($258.75) per Active Building Lateral in 2015. This fee is escalated annually by 3.5 percent. This fee is excluded for Building Laterals that exclusively serve Small Cell Sites.

[redacted]

The provision shown above excluding fees to Small Cell sites was written to clarify the definition of when Active Building Laterals were subject to fees. Only sites that use a PG&E

15/ See PG&E's Application, pp. 5-6.

path to enter a building are subject to payment of this additional fee. If the routes stop at other than a building (ex. in a box beyond which additional construction is needed), then PG&E's pathway has not provided additional value to the customer that would entitle PG&E to earn an additional Active Building Lateral payment. In these cases, PG&E is reimbursed solely through the Distance Fee.

19. An explanation of why the many rates, fees, and charges specified in the License Agreement are reasonable (see, e.g., Sections 5.1(a), 5.4(a), 5.4(d), 5.5, 5.6, and 5.12(b)) in both the immediate future and over the term of the contract. (Note: PG&E has designated all rates, fees and changes as confidential.)

PG&E's Response

The rates, fees, and charges are reasonable because PG&E recovers all of its expenses and receives additional revenue which will benefit ratepayers in the form of reduced operational revenue requirements.

In addition, the proposed transaction will enable PG&E to obtain communications capacity and telecommunications services and expand its communications and control systems such as automation, transfer trip schemes, remedial action schemes, supervisory control and data acquisition ("SCADA") as well as upgrade PG&E's internal voice and data network. The transaction will enhance and not adversely impact PG&E's ability to continue safe and reliable delivery of services to its customers.

The rates, fees and charges are reasonable to ExteNet for several reasons, including that the Agreement:

1. Reduces ExteNet's cost to build its telecommunications network. It will use existing conduits, which will reduce the need for costly street cuts, permits, and environmental disruption;

2. Significantly reduces the amount of time ExteNet can service a customer after making a sale (speed to market).

3. Grants ExteNet access to building entries, to maps, and to PG&E's mark-and-locate services;

4. Requires both parties to mutually and proportionally share the cost of maintenance and restoration of the fiber optic cable that ExteNet installs.

5. Provides ExteNet with access to PG&E's systems design and engineering resources, and PG&E's real estate expertise if necessary.

20. The License Agreement at Section 5.6 states that an annual site license fee shall be the market rate per square foot of space used. Section 5.12(b) has a market-based rate for rack space. How will the "market rates" be determined?

<u>PG&E's Response</u>

The site license fees will be determined by real estate values in the geographical areas in which the sites are located. Once ExteNet submits an application for use of specific conduit space, PG&E will determine the location and market values of the space at that location. The rack space fees are determined by what PG&E pays other telecommunications carriers for rack space. Both site and rack space fees are escalated annually.

21. The License Agreement at Section 5.7(c) states that PG&E will not be reimbursed for its "return on capital." Why is this reasonable, particularly in light of the ROW Rules which contemplate annual rental fees that recover a utility's cost of ownership?

<u>PG&E's Response</u>

PG&E will not incur any capital costs during the installation of ExteNet's fiber cable facilities. Pursuant to the License Agreement, ExteNet will pay all costs to install the cable. During the facility installation, PG&E will only incur make-ready expenses that will reimbursed by ExteNet. Therefore, it is unnecessary to reimburse PG&E for its "return on capital."

22. The ROW Rules, at Section VI.C.2, require contracts for access to support structures to be filed using the advice letter procedure set forth in General Order 96-B. Does this provision in the ROW Rules apply to the License Agreement? If not, please explain.

PG&E's Response

Yes, ROW Rule Section VI.C.2 applies to the License Agreement. However, Section 851 and accompanying G.O. 173 also apply to the License Agreement, because PG&E proposes to encumber its property (underground conduits) under the Agreement.

PG&E cannot encumber utility-owned property without seeking Commission approval under Section 851. Any transaction that does not receive this approval is null and void. Section 851 and G.O. 173, requires PG&E to file a formal application for transactions that are anticipated to exceed five million dollars in value. An advice letter process is available only for transactions that are not anticipated to exceed five million dollars in value.[16/] Given the value of the proposed transaction with ExteNet, PG&E correctly filed the License Agreement pursuant to Section 851.

The advice letter process under GO 96-B "provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions."[17/] Matters not appropriate for advice letter treatment must be filed as an application or other more formal pleading.[18/] By filing a formal application, PG&E has complied with the express requirements of Section 851 and G.O. 173 and has gone beyond the requirements set forth in ROW Rule Section VI.C.2.

16/ Pursuant to PU Code Section 851, "a public utility seeking to dispose of or encumber any property necessary or useful in the performance of its duties to the public must first obtain an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000), or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so." G.O. 173 states "[A]ny public utility may file an advice letter to seek Commission approval of any transaction involving the transfer or disposition of utility property valued at $5 million or less which meets the requirements for advice letter treatment specified in PU Code Section 851 and this G.O."

17/ General Order 96-B, Paragraph 5.1 ("Matters Appropriate to Advice Letters").

18/ *Id.,* Paragraph 5.2 ("Matters Appropriate to Formal Proceedings").

23. **The ROW Rules, at Section VI.C.2, require contracts for access to support structures to be "available for full public inspection." Does this provision in the ROW Rules require the entire License Agreement to be made "available for full public inspection"? If not, please explain.**

PG&E's Response

No, the ROW Rule Section VI.C.2 requirement that contracts be "available for full public inspection" does not mandate the License Agreements' confidential terms to be made public. The ROW decision expressly allows contracting parties to maintain the confidentiality of sensitive pricing and other proprietary information: "We recognize that various sorts of data exchanged between parties in negotiating access rights may contain commercially sensitive information, and each party should be permitted to request that certain data be kept confidential."[19/]

The ROW decision also concluded that terms identified as confidential are to be disclosed only on a limited basis:

> The dissemination of information which has been identified as commercially sensitive should be limited only to those persons who need the information in order to respond to or to prove and inquire concerning access.[20/]

The Commission's endorsement of confidentiality becomes meaningless if the parties are required to disclose publicly all confidential and non-confidential terms of an agreement. In addition both ExteNet and PG&E have agreed to keep License Agreement confidential.[21/]

24. **The ROW Rules, at Section VI.C.2, require contracts for access to support structures to be "extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers or cable TV companies." Is PG&E required to extend the prices, terms, and conditions in the License Agreement "to all other similarly situated telecommunications carriers or cable TV companies"? If not, please explain.**

19/ D. 98-10-058, *mimeo,* p. 28. *See also,* 45.
20/ D. 98-10-058, *mimeo,* Conclusion of Law 45.
21/ License Agreement, Section 10.3 at pp.32-33.

PG&E’s Response

No, PG&E is not required to extend the same prices, terms, and conditions in the License Agreement to all other similarly situated telecommunications carriers or cable TV companies. The terms of the License Agreement are based on a very specific set of circumstances, including the location of the fiber and PG&E’s own needs for fiber in the locations in question. As discussed in response to question 19 above, the proposed transaction will enable PG&E to obtain communications capacity and telecommunications services within a certain geographic area. PG&E does not have an unlimited need for such capacity and services. Therefore, if another similarly situated telecommunications carrier approached PG&E to request the same prices, terms, and conditions in the License Agreement, PG&E could reasonably decline the request because PG&E would no longer derive the same benefits from the transaction as it anticipates deriving from the ExteNet License Agreement, or because the location in question may already have adequate fiber capacity.

Notwithstanding the foregoing, to the extent that a telecommunications provider merely seeks access to PG&E’s support structures and not the kind of mutually beneficial transaction contemplated in PG&E’s License Agreement with ExteNet, then the prices, terms, and conditions for the access-only transaction should reasonably be extended to other similarly situated telecommunications providers.

The ROW decision explained that parties must be able to negotiate agreements of ROW access appropriate to each situation, and that it is unrealistic to expect uniformity in the terms, conditions and prices of these agreements:

> Given the complexities of utility facilities and the diversity of ROW access needs, it is not feasible to craft a set of rules or tariffs which addresses every conceivable situation which may arise. Individual carriers must negotiate the terms of ROW access based on the particular circumstances of each situation. On the other hand, the adoption of certain general guiding principles and minimum performance standards concerning ROW access is appropriate to promote a more level competitive playing field in which individual negotiations may take place. In order to guide parties in negotiations, we shall therefore adopt a general set of rules governing ROW access which strike a balance in providing

> some degree of detailed performance standards while leaving discretion to parties to tailor specific terms to the demands of individual situations.
>
> It is unrealistic to expect that all ROW access agreements will be uniform with respect to prices, terms, or conditions. Differences are acceptable as long as they are justified by the particular circumstances of each situation, and do not merely reflect anticompetitive discrimination among similarly situated carriers. Because telecommunications carriers' ROW requirements and constraints are too diverse to lend themselves to a uniform set of tariff rates and rules for every situation, we shall not require the filing of tariffs covering the terms of ROW access.[22/]

The Commission stressed that the ROW Rules adopted by D.98-10-058 are a starting point to guide contract negotiations and also provide the necessary flexibility to reach mutually agreeable arrangements:

> We shall, therefore, adopt a set of rules … governing ROW arrangements, and shall administer the rules in the form of "preferred outcomes." Parties may negotiate their own terms and conditions different from those set forth in our rules, tailored to the particular circumstances of a given situation. Yet, the presence of the "preferred outcomes" embodied in our rules will provide a disciplined point of reference as recourse for negotiations to proceed in a competitively neutral manner. The use of these rules as "preferred outcomes" will help guard against unbalanced negotiating power and unfairly discriminatory treatment, yet provide the necessary flexibility to facilitate mutually agreeable arrangements.[23/]

25. If the prices, charges, and fees (together, "prices") that PG&E receives under the License Agreement are less than what PG&E could charge under the ROW Rules, will PG&E's customers bear the opportunity costs for the difference between the lower prices received by PG&E under the License Agreement compared to the prices that PG&E could have received under the ROW Rules in the absence of the License Agreement? The scope of this question includes the opportunity costs associated with (a) prices received from ExteNet under the License Agreement, and (b) prices received from other similarly situated telecommunications carriers and cable TV companies (as described in Item 24, above).

22/ D.98-10-058, *mimeo,* pp. 6-7.
23/ D.98-10-058, *mimeo,* pp. 7.

PG&E's Response

As explained in response to Questions 3a, 3b, and 3c above, the prices, charges and fees that PG&E will receive under the License Agreement are greater than their equivalent prices under the ROW Rules.

If, hypothetically, the prices that PG&E receives under the License Agreement are less that what PG&E could charge under the ROW Rules, then PG&E customers could bear the "opportunity cost."

26. Please identify and summarize the specific provisions in the License Agreement that set forth PG&E's rights under the License Agreement, if any, to reclaim space on support structures used by ExteNet.

PG&E's Response

The License Agreement contains two main provisions that protect PG&E's rights to reclaim space on support structures used by ExteNet. First, Section 3.10 of the Agreement allows PG&E to use all of its facilities, including those being used by ExteNet, at all times for any purpose that PG&E finds necessary.[24/] Second, Section 13.1 of the Agreement permits PG&E to discontinue ExteNet's use of PG&E's facilities or to relocate any of these facilities.[25/] If discontinuance or relocation of PG&E's facilities is necessary, PG&E will provide ExteNet as much written notice as possible under the circumstances. See, *supra*, PG&E's response to Question 14b.

24/ License Agreement, Section 3.10 at p. 8.
25/ License Agreement, Section 13.1 at p. 37.

III. CONCLUSION

PG&E appreciates the opportunity to present the information in these amended responses to the ALJ's request for specified information. In doing so, PG&E reserves its opportunity to request review of the January 5, 2016 ruling on PG&E's Motion to File Certain Information Under Seal.

Respectfully Submitted,

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