

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company (U 39 E) for a certificate of public convenience and necessity to provide: (i) full facilities-based and resold competitive local exchange service throughout the service territories of AT&T California, Frontier California Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California, and (ii) full facilities-based and resold non-dominant interexchange services on a statewide basis.

Application No. 17-04-010
Filed April 6, 2017

**RESPONSE OF THE GREENLINING INSTITUTE TO APPLICATION OF PG&E FOR
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, The Greenlining Institute (Greenlining) submits this Response to PG&E's Application for a Certificate of Public Convenience and Necessity. PG&E's representations in its Application do not provide sufficient assurance that the grant of PG&E's Application will serve the public convenience and necessity. Greenlining respectfully requests that the Commission further investigate the impacts of the Application on the public interest. If the Commission finds that the grant of a CPCN would not serve the public interest, it should either deny the Application or grant the CPCN subject to mitigation measures that ensure that the grant of the CPCN protects the public interest.

I. INTRODUCTION

Hypothetically, PG&E's offering telecommunications services has enormous potential to introduce badly needed competition into telecommunications markets and bridge the digital

divide. These actions will particularly benefit consumers from communities of color, who generally have disproportionately lower access to quality, affordable telecommunications services. With a CPCN, PG&E could encourage the deployment of advanced telecommunications by extending its fiber network into unserved and underserved communities. PG&E could also leverage its existing fiber network to create points of presence¹ in unserved and underserved communities, thereby encouraging the construction of third-party telecommunications networks including local ISPs and municipal broadband networks. This new deployment could increase the availability of advanced communications services, resulting in increased competition, lower prices, and better service quality. These increased investments in infrastructure and expanded service offerings would create new jobs.² Accordingly, PG&E could leverage a CPCN to meet the Commission's requirements that the grant of a CPCN must serve the public interest by encouraging innovation, speeding deployment of services, lowering rates and improving service quality, spurring new investment, and creating jobs.³

Unfortunately, PG&E's Application indicates that if granted a CPCN, PG&E will not be taking any of those actions. Based on its Application, PG&E intends to use the CPCN to only offer service in the portions of its service territory where it already has deployed fiber,⁴ and to at most five customers.⁵ It further appears that PG&E would use its CPCN for the extremely

¹ "Points of presence" refer to locations in a provider's network where other providers can connect their networks.

² It should be noted that PG&E has one of the most robust and successful supplier diversity programs in California. CITE SDRC. Accordingly, PG&E is particularly well positioned to leverage a CPCN to increase jobs in communities of color.

³ Cal. Pub. Util. Comm'n., Decision Addressing Revisions to the Certification Processes for Telephone Corporations Seeking or Holding Certificates of Public Convenience and Necessity, and Wireless Carriers Seeking or Holding Registration, D.13-05-035, Attachment A at p. 5 (hereafter, D.13-05-035).

⁴ Application at p. 11.

⁵ *Id.* at p 13.

narrow purpose of providing service to a very few, large telecommunications incumbents,⁶ presumably excluding smaller competitive providers as customers. The current state of competition provides insufficient incentives to incumbents to offer telecommunications services to unserved and underserved communities. As a result, there is a high likelihood that PG&E's offering of telecommunications services to large providers will reduce incumbents' costs, without any of those savings passed on to customers. Furthermore, PG&E indicates that any buildout or upgrades of its network would be minimal.⁷ Accordingly, it appears that any public interest benefits will be incidental at best.

Based on PG&E's representations, Greenlining is concerned that the Commission's grant of a CPCN may not serve the public interest. The Commission should investigate what cognizable and verifiable benefits and harms would result from its granting the Application. If the Commission determines that granting the Application would not benefit the public interest, it should either deny the Application or impose conditions sufficient to protect the public interest.⁸

II. THE COMMISSION SHOULD INVESTIGATE WHETHER GRANTING THE APPLICATION WOULD SERVE THE PUBLIC INTEREST.

An applicant seeking a Certificate of Public Convenience and Necessity must show that "granting its application will benefit the public interest."⁹ When considering whether to grant a CPCN, the Commission considers whether the grant will (1) encourage technological innovation in communications, (2) speed deployment of advanced communications services, (3) lower rates and or improve service for telecommunications customers, (4) create investment in new

⁶ See Application at p. 5.

⁷ *Id.* at p. 13.

⁸ Greenlining suggests specific conditions in section II.(D), below.

⁹ D.13-05-035, Attachment A at p. 5.

infrastructure, and (5) create new jobs.¹⁰ Greenlining generally supports efforts to introduce more competition into telecommunications markets. However, Applicants have not provided sufficient information to demonstrate that the grant of its application will serve the public convenience and necessity. The Commission should investigate the public interest effects on competition, pole attachment, and network traffic management and privacy.

A. The Commission Should Investigate Whether the Competitive Effects of the Grant of a CPCN would serve the Public Convenience and Necessity.

The Applications states that the grant of a CPCN allow PG&E to “provide competitive local service in competition with those other carriers authorized by this Commission to provide similar services.”¹¹ However, statements in the remainder of the Application make it unclear how the grant of the CPCN will increase competition. For example, the Application states that PG&E does not intend to offer residential retail service.¹² Accordingly, the grant of the CPCN would not have any direct effect on competition in the market for residential retail services.

Similarly, it is unclear whether the grant of the CPCN would affect competition in the market for enterprise services. The Application states that the grant of a CPCN will enable PG&E to offer services to a very small number of customers--between one and five customers in its first four years, and “more than” five customers beginning in its fifth year.¹³ These customers will consist of “telecommunications carriers and business, government, and educational enterprises.”¹⁴ In discussions with Greenlining, PG&E stated that it has existing contracts with

¹⁰ D.13-05-015

¹¹ Application at p. 10.

¹² Application at p. 4.

¹³ Application at p. 13.

¹⁴ Application at p. 4.

large telecommunications providers for dark fiber or pole placement.¹⁵ Given the small number of proposed customers, it is likely that PG&E will be selling its telecommunications services to existing telecommunications providers, rather than competing with those providers in the business services market. Accordingly, it is unclear how the proposed grant of a CPCN will enhance competition in the market for business services.

Finally, it is unclear whether the grant of the CPCN will affect competition in the market for backhaul services. As discussed above, PG&E will likely not compete with incumbent telecommunications providers. It is possible that PG&E will compete with other backhaul providers such as Level 3 and Zayo. However, even if PG&E does compete in the backhaul services market, there is no guarantee that any market efficiencies will be passed on to customers in the form of reduced prices for customers of telecommunications services. The public convenience and necessity is not served by one corporation's reducing another corporation's operating costs, without any assurance that those cost savings will be passed along to customers.

Based on the limited information in the Application, it is unclear whether, or how, the Commission's grant of a CPCN would enhance competition in the retail consumer, enterprise, or backhaul markets. As a result, there is insufficient information to demonstrate that the grant of the Application will serve the public convenience and necessity. The Commission should investigate whether the grant of PG&E's Application will increase competition, and impose any safeguards or mitigation measures necessary to ensure that increase in competition.

B. The Commission Should Investigate How the Grant of a CPCN would Affect PG&E's Pole Attachment Practices.

¹⁵ PG&E representatives stated that they have relationships with the "big four" wireless companies and AT&T, Cox, Comcast, and Frontier.

The Application states that PG&E will offer pole attachment on a “nondiscriminatory, first-come, first served basis.”¹⁶ However, PG&E’s offering telecommunications services would create an incentive to delay or deny access to PG&E’s towers and poles to other telecommunications providers. This risk is complicated by PG&E’s position that it cannot certify that none of its affiliates, officers, directors, or partners has been sanctioned by the FCC or any state regulatory agency, or that those persons have not been found civilly or criminally liable for misrepresentations to customers.¹⁷ Greenlining respectfully suggests that the Commission not grant the Application until and unless it is satisfied that PG&E is, and will continue to, allow other providers pole attachment on a reasonable and timely basis.

C. The Commission Should Investigate How the Grant of a CPCN would Affect PG&E’s Network Management, Traffic Shaping, and Customer Privacy Policies.

The Commission should ensure that PG&E’s policies and practices for provision of telecommunications services under the CPCN will be consistent with the public interest. For example, the Commission should ensure that PG&E will not discriminate against, or give preferential treatment to, any data content or applications on its network. Similarly, the Commission should ensure that PG&E will not allow federal agencies’ monitoring of the electric grid to prevent cyberattacks¹⁸ to expand into surveillance of PG&E’s telecommunications customers.

D. If Necessary, the Commission Should Impose Conditions to Protect the Public Interest.

¹⁶ Application at p. 12.

¹⁷ Application at p. 15.

¹⁸ See United States Dept. of Energy, Office of Electricity Delivery and Energy Reliability, Cybersecurity for Critical Energy Infrastructure, available at <https://energy.gov/oe/cybersecurity-critical-energy-infrastructure> (last accessed May 14, 2017).

If the Commission does grant the Application, it should impose any safeguards or mitigation measures necessary to ensure that PG&E's offering telecommunications service promotes competition and serves public convenience and necessity. Greenlining respectfully suggests the Commission impose, but not be limited to, the following mitigation measures as conditions of the grant of the CPCN:

- A requirement that PG&E build out points of presence to unserved or underserved communities where more than 25% of households speak a language other than English at home.
- A requirement that PG&E provide free or at-cost backhaul connections to anchor institutions in to unserved or underserved communities where more than 25% of households speak a language other than English at home;
- A requirement that PG&E allow other providers pole attachment on a reasonable and timely basis, with automatic penalties for PG&E's failure to do so; and
- A requirement that PG&E implement terms of service that ensure nondiscriminatory treatment of network traffic and the protection of users' privacy.

III. PROCEDURAL ISSUES

A. Comments or Objections Regarding the Applicants' Statement On The Proposed Category

Greenlining have no objection to Applicants' proposed category of Ratesetting.¹⁹

B. Need for Hearing

As discussed above, the Commission should investigate and make factual findings regarding the impacts of the Application. These factual findings should include, but should not be limited to, competitive effects, effects on broadband deployment and services, and jobs. The Commission should also investigate and make factual findings regarding the question of whether mitigation measures can be implemented that would result in an overall benefit to the public

¹⁹ Application at p. 2.

interest. Accordingly, Greenlining believes that this proceeding will require evidentiary hearings.

C. Issues to be Considered

Greenlining respectfully requests that the Commission's assessment of the Application include consideration of the following issues:

- Whether Applicants have met their burden of proof to demonstrate that granting the Application is in the public interest.
- How the competitive effects of PG&E's offering of telecommunications services will affect the public interest.
- How PG&E's business practices related to the provision of telecommunications services will affect the public interest.
- Whether Applicants have complied with the Commission's D.13-05-035 certification requirements.
- What mitigation measures, if any, would be sufficient to ensure that granting the Application is in the public interest.

D. Proposed Schedule

Greenlining respectfully suggests a schedule that will allow input from stakeholders and the Commission to sufficiently evaluate the impacts of the Application on the public interest.

While Greenlining does not have specific suggestions for the schedule at this time, Greenlining does feel that PG&E's suggested date of July 2017 for a decision is overly ambitious, and that a target of September or October 2017 would be more appropriate.

IV. CONCLUSION

Greenlining has consistently supported increased competition in telecommunications markets, especially the market for broadband backhaul. Greenlining supports any action by PG&E that would lower costs for consumers and small business owners, particularly consumers and small business owners of color. Unfortunately, it appears that if granted a CPCN, PG&E's telecommunications business will be limited to making it less expensive for large entrenched

incumbents to operate. PG&E has not provided any evidence that its holding a CPCN will enhance competition or lower prices to the benefit of smaller competitors or consumers.

For the above-stated reasons, Greenlining respectfully requests that the Commission deny the public interest impacts of the Application and consider conditions if necessary.

Respectfully submitted,

Dated: May 15, 2017

/s/ Paul Goodman
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The Greenlining Institute