

December 20, 2000

ADVICE 2063-E
(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

Subject: Informational Telecommunications Advice Letter

Pacific Gas and Electric Company (PG&E) hereby submits for information purposes in accordance with Decision (D.98-10-058) dated October 22, 1998, Rule VI, (at Appendix A) and D. 00-03-055 Order Modifying D. 98-10-058 and Denying Rehearing dated March 16, 2000, copies of its Master Pole and Underground Facilities License Agreement between the Company and (1) Roseville Telephone Company (Tab A); (2) NEXTLINK California Inc. (Tab B); and (3) GST Telecom, California Inc.¹ (Tab C); for access by these telecommunications companies to PG&E's wood utility poles and underground electric conduit in the Company's existing utility rights of way.

Each agreement is a revocable license to use the Company's wood utility poles and conduit pursuant to the explicit provisions of General Order (G.O.) 69-C.² True and correct copies of the three agreements are attached hereto as Exhibits 1, 2, and 3. (Tabs A-C).

Background

Each of the telecommunications companies represents that it is a utility regulated by this Commission (Section 1.4 of the Agreements) and holds a CPCN for telecommunications services. As such, these companies agreed that

¹ The GST Telecom Agreement is limited to 8 poles and 5 anchors located on the south side of Stanley Boulevard in Livermore, California, Agreement, Section 1.1. GST has filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware, Case No. 00-1982 (GMS).

² General Order 69-C provides in pertinent part: "all public utilities covered by the provisions of Section 851 are hereby authorized to grant easements, licenses or permits for use or occupancy on, over, or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and services of such public utilities to and from their several patrons or consumers."

As D. 00-03-055 observes, at 28, "General Order 69C gives blanket Section 851 authorization for easements on utility property."

the Agreement “applie[d] to Permittee’s activities only to the extent such activities are covered by its CPCN.”

Roseville Telephone Company received its CPCN in D.98-06-067 which included the Commission’s standard Mitigated Negative Declaration (MND) for telecommunications providers. In Finding 1 the Commission approved attachments within existing utility rights of way, such as are the subjects of the current agreements, and ordered the applicant to modify its CPCN if its work were outside the existing rights of way.

In D.95-12-057, pages 31 to 32, the Commission issued a CPCN to NEXTLINK and GST³ again recognizing no potentially significant environmental impacts if the telecommunications utility’s project stayed within existing utility rights of way.

The proposed project could have potentially significant environmental effects for all environmental factors if a proposed project extends beyond the utility right-of-way into undisturbed areas or into other rights of way. (“Utility right-of-way” means any utility right-of-way, not limited to only telecommunication utility right-of-way.) For the most part, the petitioners do not plan to conduct projects that are beyond the utility right-of-way. However, should this occur, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). An appropriate environmental analysis of the impacts of these site specific activities shall be done.

All of these agreements are only for attachments within PG&E’s existing utility right of way.

Critical to each Agreement is the telecommunications company’s acknowledgment that its rights under the Agreement are subject to G.O. 69-C. Section 2.1 of each Agreement provides as follows:

(a) This Agreement as a License is given pursuant to the authority of, and upon, and subject to, the conditions prescribed by CPUC General Order (“G.O.”) No. 69-C dated and effective July 10, 1985, which G.O. No. 69-C by this reference is incorporated herein. This License is effective the date it is signed by PG&E, and will terminate based on any of the terms and conditions set forth in this Agreement.

³ At that time GST was known as GST Lightwave (CA). On September 17, 1996 it notified the Commission of its name change to GST Telecom California.

(b) Pursuant to G.O. 69-C this License is conditioned upon the right of PG&E, either upon order of the CPUC, or upon PG&E's own decision to commence or resume the use of the property in question whenever, in the interest of PG&E's service to its patrons or customers, it shall appear necessary or desirable to do so. PG&E will use commercially reasonable efforts to accommodate relocations, rearrangements and replacements under sections 7.2, 7.4, and 7.8.

(c) Notwithstanding anything in this Agreement to the contrary, including Article IX ("Dispute Resolution"), interpretation of the meaning and effect of G.O. 69-C in this Agreement shall be in the exclusive jurisdiction of the CPUC.

Moreover, in the termination provisions, as set forth in Section 10.1 (b)(4), each company specifically acknowledges the Company's right to terminate the Agreement under General Order 69-C: "in accordance with the provisions of Section 2.1, if PG&E or the CPUC invoke the provisions of G.O. 69-C."

The annual attachment fee for poles and for conduit in each Agreement is based on the formula in D.98-10-058 and is set forth in the Agreement's Exhibit B; unit costs for make-ready and rearrangement work, and the mapping and engineering fees are set forth in the Agreements' Exhibit C.

In Section 4.1, the attaching parties agree to be bound by all provisions of applicable law. Section 4.1 states in pertinent part,

(a) The Permittee shall install and maintain the Attachments in conformity with all applicable laws, rules, and regulations of state and federal governments, agencies, and other governmental authorities, including, but not limited to, the rules, regulations, and orders of the CPUC, and in conformity with any safety standards or requirements as may be required or specified by PG&E in its sole, good faith discretion. All Pole Attachments must adhere to the clearance, separation, windloading and dead-end tensions and other requirements of G.O. No. 95 or any successor.

Permittee's installation in Underground Facilities must comply with G.O. 128, including but not limited to mechanically and electrically protecting Permittee's cable within any PG&E splice box, vault, or enclosure. Permittee shall not locate splices, coils of cable, or

other equipment within a PG&E splice box, vault, or enclosure. If it is practical and feasible, Permittee shall place its own enclosure adjacent to the PG&E enclosure for splices, coils of cable or other equipment. Neither the requirement that Permittee follow these practices, applicable laws, rules and regulations or special instructions given by PG&E nor the adherence to them by Permittee shall relieve Permittee for the sole responsibility to maintain safe and efficient working and operating conditions.

(b) The Permittee shall be solely responsible for the Attachments and shall take all necessary precautions during installation, and maintenance on or near PG&E Facilities and PG&E Right-of-way so as to protect all persons and the property of PG&E and others from injury and damage.

This filing will not affect any rate or charge, cause the withdrawal of service, or conflict with any rate schedule or rule.

Notice

In accordance with Section III, Paragraph G of General Order 96-A, PG&E is mailing copies of this Advice Letter to the utilities and interested parties shown on the attached list. Address changes should be directed to Nelia Avendano at (415) 973-3529.

Vice President – Regulatory Relations

Cc: Roseville Telephone Company
NEXTLINK California Inc.
GST Telecom California
Gary Yacinto, Esquire, 3303 North Central Ave., Suite 1600, Phoenix,
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Service List R95-04-043 LIST

Attachments